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FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

Patricia Diaz Dennis

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket Nos. 83-911
et al.

In re Applications of

RELIGIOUS
BROADCASTING
NETWORK
San Bernardino, California

et al.

For Construction Permit for a
New Television Station
San Bernardino, California

Appearances

Morton L. Berfield and *Roy W. Boyce*, on behalf of Religious Broadcasting Network; *Michael H. Rosenbloom*, *Richard H. Waysdorf*, and *Rebecca L. Dorch*, on behalf of Solano Broadcasting Limited; *Thomas A. Hart, Jr.* and *Frederick W. Chockley*, on behalf of A&R Broadcasting Company, A Limited Partnership; *J. Geoffrey Bentley* and *Geraldine M. Carr*, on behalf of Buenavison Broadcasters; *John Wells King*, *James E. Dunstan*, and *Melodie A. Virtue*, on behalf of SSP Broadcasting, A Limited Partnership; *James A. Gammon* and *Diane H. Ming*, on behalf of Good News Broadcasting Network; *William M. Barnard*, *James K. Edmundson*, and *Mark Van Berg*, on behalf of Sandino Telecasters; *Robert A. Beizer*, *R. Clark Wadlow*, and *Craig J. Blakeley*, on behalf of Inland Empire Television; *David Tillotson*, *Susan A. Marshall*, and *Gerald P. McCartin*, on behalf of Television 30, Inc.; *Steven A. Lerman*, *Dennis P. Corbett*, and *Sally A. Buckman*, on behalf of San Bernardino Broadcasting Limited Partnership; *Ashton R. Hardy* and *James J. Popham*, on behalf of All Nations Christian Broadcasting, Inc.; *Martin R. Leader*, *David D. Oxenford*, and *Lisa R. Mikalonis*, on behalf of Channel 30, Inc.

DECISION

Adopted: June 17, 1988; Released: July 5, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

Board Member BLUMENTHAL:

BACKGROUND

1. This proceeding involves twelve mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 30 at San Bernardino, California. The applicants are: Religious Broadcasting Network (RBN), Solano Broadcasting Limited (Solano), A&R Broadcasting Company, A Limited Partnership (A&R), Buenavision Broadcasters (Buenavision), SSP Broadcasting, A Limited Partnership (SSP), Good News Broadcasting Network (Good News), Sandino Telecasters (Sandino), Inland Empire Television (Inland Empire), Television 30, Inc. (TV 30), San Bernardino Broadcasting Limited Partnership (SBB), All Nations Christian Broadcasting, Inc. (All Nations), and Channel 30, Inc. (Channel 30). By *Hearing Designation Order*, Mimeo No. 6506, released September 20, 1983, these applications, along with twenty-five others that were subsequently dismissed,[1] were designated for hearing on an air hazard issue against Solano and on the standard comparative issue. Presiding Administrative Law Judge (ALJ) Joseph P. Gonzales subsequently added a real party-in-interest issue against SBB and a misrepresentation/lack of candor issue against Sandino. *Memorandum Opinions and Orders*, FCC 84M-4973 and FCC 84M-4974, released November 28, 1984. The air hazard issue was resolved favorably to Solano by summary decision. *Memorandum Opinion and Order*, FCC 84M-1422, released March 21, 1984. Thereafter, in an *Initial Decision* (*I. D.*), 2 FCC Rcd 6561 (1987), the ALJ disqualified both SBB and Sandino on the real party-in-interest and misrepresentation/lack of candor issues, respectively, and granted Channel 30's application after concluding that it was comparatively superior to the other nine applicants. The proceeding is now before the Review Board on exceptions filed by the parties. We have reviewed the *I. D.* in light of the exceptions and reply briefs, oral argument held April 1, 1988, supplemental briefs filed April 20, 1988, and our examination of the record. We adopt the ALJ's findings and conclusions, except as modified herein, and affirm his ultimate conclusion that the grant to Channel 30 is consistent with applicable Commission policies and precedent.

2. In the *I. D.*, the ALJ considered the applications of all twelve remaining applicants according to the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) (*Policy Statement*), under which the competing applicants are scored against one another on the following two cardinal criteria: (1) diversification of control of the media of mass communications, the Commission's "factor of primary significance"; and (2) "best practicable service." Under criterion (2), the Commission considers such secondary qualities as integration of active ownership with day-to-day management of the proposed station, local residency, local civic activities in the community that would betoken a knowledge of, and interest in, the subject community, racial and sexual characteristics of the applicant (*see Cannon's Point Broadcasting Co.*, 3 FCC Rcd 864 (1988)), prior broadcast experience, and and proposed signal coverage differences. *See Policy Statement*, 1 FCC 2d at 395, *et seq*. In almost all cases, those applicants without any other significant mass media holdings are considered comparatively superior to competitors already owning other media interests, the *Policy Statement* being sharply and very deliberately skewed to favor newcomers.[2] For practical reasons, therefore, our review of the exceptions centers first on those directed to the ALJ's findings and conclusions relative to the "primary" comparative factor of diversification of control of the media to assure that those applicants with other attributable media holdings have been appropriately charged with such interests; and to assure at the same time that no applicant has been improperly charged with an existing media interest, if such an interest has been erroneously attributed to that ap-

plicant. After disposing of any "diversification" exceptions, we shall turn to the numerous exceptions relating to "best practicable service" to determine, if possible, any other meaningful comparative differences as between the twelve competing applicants.

DIVERSIFICATION OF CONTROL OF THE MASS MEDIA

3. In general, the *Policy Statement's* reference to other communications media focuses initially upon co-owned broadcast interests. *See* 1 FCC 2d at 394-395. Newspaper ownership is also considered significant under FCC "diversification" policies, *see id.* ; *see generally FCC v. National Citizens Commitee for Broadcasting*, 436 U.S. 775 (1978), as are co-owned cable television interests, although cable television interests have not been, until recently,[3] regarded by the Commission as very significant media outlets of speech or expression. *Greater Wichita Telecasting, Inc.*, 55 RR 2d 926, 929 (1984) (Comm'n) (CATV interests have traditionally been less important for diversification purposes than broadcast interests, since broadcast stations provide unique local and informational programming to their communities of license and adjacent areas).[4] However, those applicants currently possessing other mass media interests who desire to eliminate in advance any apparent "diversification" handicap *vis a vis* competing applicants holding no other mass media properties may avert any such potential "diversification" demerit by one of two avoidance measures. One, an applicant may make a timely pledge to divest any or all current media interests if that applicant is finally awarded the new facility, an avoidance mechanism we just recently elaborated upon in *Martin Intermart, Inc.*, 3 FCC Rcd 1650, 1651 (Rev. Bd. 1988), *erratum*, 3 FCC Rcd 2155.[5] A second method that an applicant can use to avoid being charged with another extant media ownership interest is to structure its application in a two-tiered mode, so that any principal of that applicant who currently holds other media interests is confined to a "passive" role in the new applicant entity; *e.g.*, by confining that media-burdened principal to the role of a "non-voting" stockholder (if the new applicant is a corporation) or to the role of a "limited" partner (if the new applicant is a limited partnership). The existing media holdings of such purely "passive" applicant principals are not ordinarily attributable for the purpose of FCC media "diversification" policies. *See, e.g., Cleveland Television Corp.*, 91 FCC 2d 1129, 1131-1133 (Rev. Bd. 1982)(media interests of an applicant's nonvoting shareholders not cognizable in comparative "diversification" calculations), *aff'd*, 732 F.2d 962 (D.C. Cir. 1984); *Capital City Community Interests, Inc.*, 2 FCC Rcd 1984-1989 (Rev. Bd. 1987)(media interests of an applicant's "limited" partners not cognizable in comparative "diversification" calculations).[6] Of course, if it is determined that a putatively "passive" principal of an applicant takes, in actuality, an *active* role in the media affairs of that applicant, that principal's other media holdings will be attributable to the subject applicant, just as if the active principal were a "voting" stockholder or, as the case may be, a "general" partner. *See Tulsa Broadcasting Group*, 2 FCC Rcd 6124, 6131 (Rev.Bd. 1987).

4. With that brief background in place, we will review the exceptions to the *I.D.* as they affect the *Policy Statement's* focus on diversification of media control. One set of exceptions asserts that the ALJ erred when, at *I.D.*, paras. 314-315, he did not assess a "diversification" demerit against RBN, because RBN's proposed General Manager and Chief Executive Officer, Reverend Roy Kenneth Foreman, had entered into a January 27, 1984 agreement with the Construction Permittee of UHF Channel 65, San Jose, California, to provide a minimum of twelve hours a day of programming produced by Reverend Foreman's Cathedral of Faith; and, the agreement further provided, to pay all of the operating expenses of Channel 65. This 1984 agreement was not modified by Reverend Foreman's pledge to resign from Cathedral of Faith until four days after the "B" cut-off day, the established deadline for avoiding the attribution of any other media interests.[7] Initially, we find that the twelve hours per day of Cathedral of Faith programming that was to be supplied to Channel 65 is a media interest to be considered in this case. (As we discuss *infra*, however, Cathedral of Faith has now contracted to purchase outright Channel 65.) In one of the few decisions in which the Board has contemplated the question of whether a program production entity is a medium of communications within the purview of the *Policy Statement*, the Board stated that it would not generally consider such media activities unless the "production company undermines the objectives underlying the principle of diversification of control of mass media, *i.e.*, maximizing available program services and viewpoints . . . ." *Morris, Pierce & Pierce*, 88 FCC 2d 713, 724 (Rev. Bd. 1981), *review denied*, FCC 83-31, released January 25, 1983. *See also Golden State Broadcasting Corp.*, 94 FCC 2d 212, 214 (Rev. Bd. 1983) (radio production company supplying public affairs programming to 21 Arizona radio stations raises media "diversity" concerns)(subsequent history omitted).[8] As we view the instant facts, we submit that there can be no serious debate about whether ownership, for example, of a sizeable broadcast network (an obvious illustration of a "program production" entity) would trigger the Commission's customary media diversification concerns. *See, e.g., National Broadcasting Co. v. United States*, 319 U.S. 190 (1943). And, while the program production interests at issue here are certainly a far cry from a major national or regional broadcast network, Cathedral of Faith's contract to fully provide twelve hours per day of television programming to a same-state television station must register cognizably upon the Commission's idealized standard of "maximizing available program services and viewpoints." We do not say that such an impact equates to actual broadcast station ownership; but, neither can such a media activity be entirely ignored under the traditional diversification tenets of the *Policy Statement*. Moreover, we note that, on March 11, 1987, RBN amended its application to report that Cathedral of Faith, for whom Reverend Foreman and several other RBN directors now work in the area of programming production and distribution *(I.D.*, para. 314), filed an application with the Commission to permit it to purchase outright Channel 65, San Jose. Accompanying that March, 1987 RBN amendment was again the pledge of Reverend Foreman to resign from all of his positions with Cathedral of Faith, should the RBN television application here be granted.[9]

5. The operative questions here, then, are whether the ALJ erred or permitted RBN to improperly improve its comparative "diversification" standing by accepting RBN's pledges to untether Reverend Foreman from his 1984 Channel 65 programming contract; and/or, later, by accepting RBN's March, 1987 pledge that Reverend Foreman would resign all of his Cathedral of Faith offices

should RBN be now awarded the instant Construction Permit. Finding that the extensive Cathedral of Faith programming activities of Reverend Foreman were and are cognizable, *I.D.*, para. 315, we nonetheless agree with the ALJ that Reverend Foreman's divestiture (and/or resignation pledges) were sufficiently timely to avoid any "diversification" demerit which might otherwise have attended his Cathedral of Faith/Channel 65 relationships. The Board, of course, keenly appreciates the necessity of establishing firm procedural deadlines in the comparative process, and we recognize that the missing of certain important filing deadlines, even by a single day, can sometimes be fatal to a litigant.[10] Nor do we wish to become arbitrary in the application of established administrative deadlines by appearing to countenance tardiness in one case, but not excusing it in another. However, after much consideration of the facts and circumstances here present, we shall affirm the ALJ's rulings which spared RBN the burden of any potential Cathedral of Faith related "diversification" demerit. As to the ALJ's acceptance of Reverend Foreman's pledge to separate himself from his 1984 agreement to supply Channel 65's programming, a pledge coming four days after the "B" cut-off date, we find RBN's minor deviation to be unremarkable, especially in view of the fact that our prior determinations regarding "program production" activities were not, in retrospect, as well set out as we would have now preferred. *See supra*, *Morris, Pierce & Pierce* ; *Golden State Broadcasting Corp*. Hence, RBN may not have been certain at the "B" cut-off deadline that the Cathedral of Faith/Channel 65 program supply contract was, in fact, a reportable mass media interest having measurable comparative consequences. Even in its exceptions, RBN continues to argue that the Channel 65 program contract was "not a media interest to be reported in FCC Form 301,"[11] and it would appear that RBN's March 2, 1984 amendment reporting the Channel 65 contract was, from its perspective, merely intended as *ad cautelam ex abundanti*.[12] In these circumstances, the ALJ was not unreasonable in accepting RBN's 1984 amendment only four days after the "B" cut-off date. The March 11, 1987 amendment, reporting the outright purchase of Channel 65 by Reverend Foreman's Cathedral of Faith, presents another question. There can be no doubt that Channel 65 itself is a cognizable media interest; nor is there any question that Reverend Foreman's dominant positions with both Cathedral of Faith and RBN would otherwise carry cross-ownership consequences, *see Policy Statement*, 1 FCC 2d at 394 n.5. And, finally, the Board had announced in *Santee Cooper*, *supra* note 3, that after-acquired media interests would be attributable to an applicant unless a "contemporaneous" divestiture pledge attended the new media acquisition, *see* 99 FCC 2d at 794-796. In that regard, we later clarified that "contemporaneous" within this context generally means within the 30-day period permitted by Section 1.65 of the Commission's Rules (47 CFR §1.65) for the reporting of decisionally significant changes in an applicant's status. *Jerome Thomas Lamprecht*, 99 FCC 2d 1219, 1222 (Rev. Bd. 1984), *review denied*, 3 FCC Rcd 2527 (1988). Here, the outright purchase of Channel 65 by Reverend Foreman's Cathedral of Faith occurred on February 2, 1987; but RBN's request to amend its application to report that Channel 65 purchase, and Reverend Foreman's concomitant resignation pledge, were not filed with the ALJ until March 20, 1987. However, it will be recalled that, at the time Cathedral of Faith entered into the 1984 program supply contract with Channel 65, Reverend Foreman had *already* pledged to resign his Cathedral of Faith positions in the event that RBN here received the San Bernardino Construction Permit. *I.D.*, para. 315. This later (1987) pledge of Reverend Foreman may be seen, then, as essentially redundant of his prior (1984) divestiture pledge. Hence, while RBN's March 20, 1987 filing was technically late under Section 1.65 of our rules, that lateness does not require the attribution of Channel 65 to RBN for comparative "diversification" purposes. *Compare Jerome Thomas Lamprecht*, *supra*, where an applicant was charged with a media interest acquired in May, 1983, but where a post "B" cut-off divestiture pledge was not tendered until February, 1984, and the Board rejected that applicant's exceedingly late attempt to upgrade its comparative position. Accordingly, we affirm the ALJ's refusal to assess any "diversification" penalty against RBN.[13]

6. Having found no error in the ALJ's disposition of the "diversification" aspects of RBN's application, we turn next to his treatment of the other applicants as they relate to their media interests. At *I.D.*, paras. 158-160, the ALJ lists the various media interests of Buenavision principal Frank Dominguez as follows: (1) 24% equity interest and Chairman of the Board of Buenavision Telecommunications, Inc., operator of a cable television system in East Los Angeles; (2) 51% equity interest in Buenavision Telecommunications of Boyle Heights, Inc., operator of a cable television system in Boyle Heights, California; (3) 40% equity interest in Buenavision Cable Television of Colton, Inc., operator of a cable television system in Colton, California. Dominguez is also a principal of Community Service Television Company, Construction Permittee of Channel 60, St. Louis, Missouri and of LPTV Channel 31, San Diego, California. And, he also owns 51% of VistaCom, an applicant for "various low power television stations." Buenavision excepts because the ALJ charged it with a comparative demerit for Dominguez' 51% interest in the Boyle Heights cable television system after finding that no timely (pre-"B" cut-off) pledge was specifically made with respect thereto. *Id.*, para. 166. However, Buenavision explains that at the time Dominguez pledged to divest himself of his East Los Angeles cable system, the Boyle Heights system was a component part of that same cable television franchise and that Dominguez' May 1983 divestiture pledge covered the Boyle Heights component as well.[14] No competing applicant here has challenged this representation. We have reviewed the record on this point and agree with Buenavision that Dominguez' 1983 cable television system divestiture pledge was intended to cover, and did cover, the Boyle Heights system as well as the East Los Angeles and Colton cable television systems. We must, therefore, reverse the ALJ on this minor point, and vacate his assessment of the "diversification" demerit against Buenavision.

BEST PRACTICABLE SERVICE

Integration of Ownership with Day - to - Day Control of the Station

7. After the element of diversification of control of the mass media, the *Policy Statement* favorably emphasizes the integration of ownership with actual day-to-day control over the proposed broadcast facility. 1 FCC 2d at 395. Quite frequently, these days, the quantitative difference in the amount of ownership "integration" credit awarded is

all that dispositively separates the winning applicant from the also-rans. *See, e.g., Jerome Thomas Lamprecht, supra*, 3 FCC Rcd at 2527 (100% fulltime "integration" factor prevails over competitor's 76% corresponding factor). While several recent applicants have questioned the rationality of basing broadcast Construction Permit awards on bare percentage differences in "integration" proposals, *see, e.g., Martin Intermart, supra*, 3 FCC Rcd at 1652 & n.3, the Commission has yet adhered to its position that quantitative (percentage) differences in ownership "integration" proposals cannot be overcome by any measure of *qualitative* differences in the pertinent characteristics of closely competing applicants. *Horne Industries, Inc.*, 98 FCC 2d 601, 604 n.12 (1984)(citing *Alexander Klein, Jr.*, 86 FCC 2d 423, 428-429 (1981)). Accordingly, we next turn our attention to the exceptions taken to the ALJ's disposition of the various ownership "integration" proposals advanced by the applicants.

8. Before we do so, however, it is especially useful in this particular case to explain that the Commission's ALJs these days are - necessarily and properly we believe - scrutinizing very carefully the putative ownership structures and the "integration" proposals of many recent applicants to guard against what FCC Chairman Dennis R. Patrick recently described as an influx of "sham applications that manipulate comparative criteria to maximize a paper preference while disguising the real party in interest" who actually controls the broadcast applicant entity.[15] As many of our recent comparative cases reveal, the Commission's application processes are currently plagued with fraudulent applications wherein the real-parties-in-interest contrive to artificially structure an applicant entity around so-called principals who are, in fact, no more than false fronts interposed solely to increase that applicant's chances to prevail under the *Policy Statement's* various comparative criteria. Where such shams are detected, they are rightfully rejected by the Commission. *See, e.g., Pacific Television, Ltd.*, 3 FCC Rcd 1700 (1988)(*aff'g* ALJ and Review Board rejection of sham ownership proposal). *See also KIST Corp.*, 102 FCC 2d 288 (1985), *aff'd*, 801 F.2d 1436 (D.C. Cir. 1986); *NEO Broadcasting Co.*, 103 FCC 2d 1031 (Rev. Bd. 1986), *review denied*, 1 FCC Rcd 380 (1986).[16] Because of this recent outbreak of sham broadcast applications, *bona fide* applicants and the Commission's ALJs have been compelled to examine much more closely the alleged ownership structures and, more specifically, the purported "integration" designs of numerous competing applicants to determine whether their proposals genuinely reflect the composition of the particular applicant or whether that applicant is, in reality, an utterly artificial construct devised exclusively for the purpose of deceitfully exploiting the Commission's comparative system. As illustrated clearly by the case at bar, separating the wheat from the chaff amongst our recent comparative applicants remains an imperfect science. For, of the twelve competing applicants remaining in this case, the ALJ here refused to credit, in whole or in some material respect, the proffered "integration" proposals of all twelve. Although the Board, for the reasons set forth below, rehabilitates several of the applicants and restores, in whole or part, the "integration" credit originally sought by some applicants, we do not denigrate the ALJ's vigilance in the present environment described aptly by FCC Chairman Patrick. Unless sham applicants are stoutly rebuffed, the very fabric of the Commission's licensing process will be irreparably rent, and our broadcast license rolls reduced to a shabby sodality of frauds, mountebanks, and sundry speculators of the very lowest echelon.

9. *Channel 30.* Channel 30 is a California corporation composed of fourteen individual shareholding principals, four of whom (controlling approximately 33% of the corporation's total shares of stock) are represented here as the entity's only voting shareholders. *I.D.*, para. 7. The remaining ten shareholders (controlling approximately 66% of the corporation's stock shares) are represented as "nonvoting". For purposes of computing an applicant's quantitative "integration" factor, we examine only the "integration" proposals of the voting shareholders on the Commission's generally accepted premise that nonvoting principals have absolutely no management control over the operational activities of that corporation. *See, e.g., Cleveland Television Corp., supra* ; *see generally Attribution of Ownership Interests, supra* note 6. Channel 30's four voting shareholders are listed as follows:

Voting Shareholders	Voting Stock	Ownership Interest
Lucille Gilbreath	28.6%	10.924%
Betty Cox Johnson	28.6%	10.924%
Lucy Lopez	28.6%	10.924%
Suzanne Schott	14.3%	.840%

10. The ALJ credited the individual "integration" proposals of Gilbreath, Johnson and Lopez, *see I.D.*, para. 34, but he denied such credit to Schott, primarily because he found her to be "in effect a 'stand-in' for her husband," a communications consultant from whom she had originally acquired her Channel 30 stock. *Id.*, para. 30.[17] Animating the ALJ's apprehension that Schott would not play a true or meaningful managerial role at the proposed station was the fact that her testimony relating to her intended management duties was "noticeably confused" (*id.*). The ALJ also recorded that Schott had neither broadcast nor any other managerial experience. In rejoinder, Channel 30 accurately observes that a lack of previous managerial experience is not a valid basis for denying "integration" credit, the Commission considering such inexperience to be a remediable condition. *WFSP Inc.*, 99 FCC 2d 444, 446 (Rev. Bd. 1984)(citing *Webster - Baker Broadcasting Co.*, 88 FCC 2d 944, 951-952 (Rev. Bd. 1982)). Channel 30 further contends that although Schott's answers did reflect some confusion on a few minor points, some of that uncertainty was the product of unclear questions and Schott's occasional inarticulateness. It argues that nothing in the record justified a finding that Schott would not "integrate" fulltime into station activities or perform the proposed role of the director of the station's public affairs department, for which role she is said to be slated.

11. We have reviewed the record on these points very closely and must find that no Commission law or precedent supports a denial of Schott's "integration" credit on the grounds stated by the ALJ. Unlike, for example, the sham principal in *Pacific Television, Ltd., supra*, there is here no evidence that Schott was totally unfamiliar with her application or wholly ignorant of her future status or her proposed duties. And, unlike the situation in *N. E. O. Broadcasting Co., supra*, there is no reliable evidence here of a blatant sham. Schott asserted that her stock was transferred to her by her husband because he was, at that time, seriously ill (and is now deceased, *see supra* note 17). Her explanation is plausible, and essentially unchallenged except for the purely speculative ruminations of her opponents, none of whom sought a real-

party-in-interest issue against Channel 30. Without such an issue, or the adduction of evidence compelling the addition such an issue, we will not presume Schott to be a dummy for her husband. *See Tequesta Television, Inc.*, 2 FCC Rcd 7324, 7325 (Rev. Bd. 1987)(paras. 5-6); *see also I.D.*, para. 3 (adding real-party-in-interest issue against SBB Broadcasting, another applicant in this very case). Finding no substantial basis in the record evidence or in the law to reject Schott's tendered "integration" proposal, on the particular grounds cited by the ALJ, the *I.D.* is reversed in that respect. However, for reasons set forth more fully *infra*, para. 54, our award of a 100% quantitative "integration" credit to Channel 30 is tentative and subject to Commission clarification on the comparative status of applicant principals owning less than cognizable levels of equity in a broadcast property. *See also infra* para. 37 & n.37. As with the other eleven applicants discussed below, we will defer discussing Channel 30's qualitative "enhancing" attributes until a later section of this decision (*see infra* para. 52, *et seq.*), after we have completed our review of the exceptions directed to the basic quantitative aspects of the full dozen "integration" proposals here under basic review.

12. *Sandino*. The ALJ rejected all ownership "integration" credit for Sandino's purported sole "general" partner, Jose M. Oti, after finding that Sandino had misrepresented the ownership composition of its "limited" partnership during the course of a partially aborted merger involving Sandino and a now-dismissed competing applicant, Crocker Communications Corp. As originally filed, Sandino was the sole proprietorship of Jose Oti. *I.D.*, para. 36. According to Sandino, counsel for Crocker Communications Corp. approached Sandino counsel in January 1984 with a view toward merger of the two separate applicants. After agreeing to discuss this matter, the parties met in February and April of 1984 to negotiate the concluding details. On May 14, 1984, Sandino and Crocker Communications filed with the ALJ a "Joint Petition for Approval of Merger Agreement and Dismissal of Application," representing therein that (1) Crocker Communications was voluntarily dismissing its own pending application and that (2) Crocker's chief principal, Frankie Crocker, and another individual, Meshulam Riklis (who had theretofore been merely a financier of the original Crocker application) would become merely "limited" partners of the newly reconstituted Sandino application. The "Joint Petition" declared that, under the merger agreement, Oti would become a 30% equity owner and the sole "general" partner of Sandino, with "limited" partners Crocker and Riklis owning, respectively, 20% and 50% of the new Sandino partnership's equity. On May 21, 1984, the ALJ routinely granted the "Joint Petition" and ordered Sandino to expeditiously file with him the limited partnership agreement formalizing the subject merger.

13. However, the approved merger was never finally consummated as proposed in the "Joint Petition" for reasons essentially immaterial to our immediate regulatory concerns.[18] Suffice it that Frankie Crocker subsequently and repeatedly declined to execute the new Sandino limited partnership agreement; and, ultimately, on August 2, 1984, Sandino filed still another "Petition for Leave to Amend" in which Crocker's participation was expunged and Riklis' "limited" partnership interest increased to 70% of the total equity of Sandino. Sandino's August 2 petition for leave to amend was opposed by RBN, and on November 28, 1984, the ALJ added an issue to be tried against Sandino:

> To determine whether Sandino Telecasters or any of its principals (including Crocker Communications Corporation) has misrepresented facts or been lacking in candor with respect to matters arising from a merger agreement between Sandino Telecasters and Crocker Communications Corporation and, if so, the effect thereof on the basic or comparative qualifications of Sandino Telecasters.

Memorandum Opinion and Order, FCC 84M-4974, released November 28, 1984. After hearing this issue, and in the *I.D.*, the ALJ held that Sandino lacked candor in submitting the May 14, 1984 merger agreement and depicting itself therein as a reconstituted limited partnership. In that regard, the ALJ concluded that Oti had concealed the status of his unsuccessful negotiations with Crocker until he had reached a new accord with Riklis to assume the obligations on which Crocker had reneged. *I.D.*, para. 43. Sandino's exceptions hold Oti blameless for Crocker's failure to execute the limited partnership agreement anticipated in the original May 14 merger documents.

14. We begin our analysis with the principle first announced in *Anax Broadcasting, Inc.*, 87 FCC 2d 483, 488 (1981), in which the Commission declared that an applicant's failure to identify its "limited" partners,[19] alleged in that case to hold a 71% equity interest in one of the applicants, was not cause for dismissal of that application because - under the Commission's prevailing premise - "limited" partners play no legal role in the management or control of an applicant entity. Thus, when the *Anax* applicant sought in the midst of the licensing proceeding to amend its application to raise the "general" partner's original ownership share of 28% to 99% (by assuming the unidentified "limited" partners' 71% purported equity interest), the Commission nevertheless held that no "significant" ownership change of that applicant entity had occurred. *Id.*, at 488. At the time, the *Anax* ruling that a majority ownership transfer in mid-hearing did not constitute a significant ownership shift was quite novel, but the *Anax* Commission reasoned that the addition or deletion of "limited" partners did not affect the "control" aspects of an applicant entity or confer upon it any comparative advantage. Indeed, so institutionalized has the *Anax* ruling become that current applicants need not even identify any of the entity's "limited" partners (or, if a corporation, "nonvoting" shareholders), *see* FCC Form 301 (as revised October 1986), Pike & Fischer Rad. Reg., pp. 98:301 - 1 *et. seq.*, irrespective of the fact that such undisclosed principals might actually own as much as a 99% equity interest in the particular broadcast applicant or licensee.[20] Hence, under the prevailing *Anax* principle, Sandino's May 14, 1984 amendment petition seeking to add Crocker and Riklis as "limited" partners jointly holding a 70% equity interest in the Sandino application was legally permissible; and, in routinely accepting that Sandino amendment, the ALJ so recognized. The critical question here is whether Sandino should have been fatally disqualified later when, on August 2, 1984, Oti despaired of including Crocker as a 20% "limited" partner in Sandino, and instead added Riklis alone as Oti's solitary "limited" partner. We have reviewed the evidence and the

testimony on this point and find that no actionable misrepresentation occurred in Oti's May 14, 1984 petition, nor did Sandino display a disqualifying lack of candor in not reporting earlier Crocker's recalcitrance over signing the new Sandino limited partnership agreement. Neither the ALJ nor any other party disputes Oti's version of the events leading to Crocker's eventual elimination from the Sandino application. And, inasmuch as Riklis had never been more than a passive financier - first to Crocker, then to Oti - we perceive no motive for distorting the actions of Frankie Crocker, whose proposed 20% interest in Sandino was simply a *quid pro quo* for Crocker's withdrawal of his own long-shot application. Under the circumstances conveyed by Oti, circumstances not contradicted in the *I.D.* or the record, we find that the ALJ's disqualification of Sandino from this proceeding was error. Though this Board has no compunction against disqualifying a license applicant for serious misrepresentation, *see, e.g., KQED, Inc.*, FCC 88R-25, released May 16, 1988, we find no deliberate misrepresentation or lack or candor on Sandino's part. We therefore grant its exceptions and award to it a 100% quantitative "integration" factor based on the proposed fulltime management commitment of Sandino's sole "general" partner, Jose M. Oti.

15. *San Bernardino Broadcasting.* SBB attempted to portray itself as a "limited" partnership constructed of two disparate ownership components: (1) a corporate "general" partner identified as San Bernardino Valley Broadcasting Co. and owned entirely, in turn, by Anita Van Osdel; and (2) an array of sixteen other individuals said to be collectively the "limited" partners of SBB. However, Van Osdel's corporation - the sole purported "general" partner of SBB - holds merely 10% of the total equity of SBB, while the collective "limited" partners own in the aggregate fully 90% of this applicant's equity. Pursuant to a real-party-in-interest issue added by the ALJ, *see Memorandum Opinion and Order*, FCC 84M-4973, released November 28, 1984, the ALJ disqualified SBB as an applicant. *See I.D.*, paras. 51-60.

16. We affirm, *con brio*, the ALJ's refusal to award "integration" credit to SSB; its application was and remains a travesty and a hoax. We need not repeat, point-by-point, all of the findings of fact which the ALJ has set out to support his conclusion that the progenitor and the real-party-in-interest of SBB is definitely not Van Osdel, she being merely a fig leaf for the true kingpin of SBB, one Michael Parker, who currently holds an interest in numerous other broadcast permits (*I. D.*, para. 61), and who could not in his own identity have hoped to prevail in this very close comparative contest. As the *I.D.* adequately chronicles, Michael Parker prefabricated the SBB application for Channel 30 prior to the intromission of Van Osdel, who purportedly materialized as SBB's sole "general" partner only the day before the SBB application was filed with the FCC. Van Osdel allegedly received her "controlling" 10% equity interest from Parker's own employee, S. Kim O'Neal, while Parker transferred the equity interest previously held in his own name to his sister (and brother-in-law), Sally (and Larry) Peterson, who are currently listed as holding 20% of SBB's total equity. Having ostensibly yielded up his entire SBB interest, Parker signed an agreement with Van Osdel - the new SBB "regent" - by which Parker became SBB's chief "consultant". For this, Parker was slated to receive "60,000 for past services to the applicant and an hourly fee for future services." *Id.*, at para. 54 (citing Tr. 3351-52, 3361). In his new subservience, though, Parker's actual role was remarkably identical to his previous position. For example, Parker - not Van Osdel - "arranged" the station's financing with an individual with whom he had shared an office; Parker - not Van Osdel - selected, and communicated with, SBB's lawyer and its engineer. Indeed, Van Osdel did not even review the by-laws of SBB's corporate "general" partner at the time she became an applicant. Tr. 3551. Moreover:

> The Certificate of Limited Partnership lists Mr. Parker's office as the principal place of business for the corporate general partner (Tr. 3414-15). Mr. Parker maintained the corporation's books and records (Tr. 3572). He also accompanied Ms. Van Osdel when she opened the corporate general partner's bank account, and at his suggestion the account requires the signature of any two of the following four persons: Mr. Parker, himself; his brother-in-law, Mr. Peterson; his employee, Ms. O'Neal; and, finally, Ms. Van Osdel (Tr. 3364). When Ms. O'Neal left Mr. Parker's employ, Arlene Meryhew another Parker employee, became her replacement. Ms. Van Osdel alone cannot sign corporate checks, although corporate checks can be executed without her participation.

I.D. at para. 55. Parker accompanied Van Osdel to First Interstate Bank to open the corporate checking account, but Van Osdel - SBB's putative sole "general" partner - did not acquire the corporate checkbook, for reasons that appear as follows in the record:

> JUDGE GONZALES: I'm a little confused. Mr. Parker was with her at the bank when she got the temporary checks?
>
> MR. ANDREWS: And opened the account. And then Mr. Parker --
>
> JUDGE GONZALES: And she took them home and then mailed them to Mr. Parker?
>
> MR. ANDREWS: That's the deposition testimony.
>
> JUDGE GONZALES: Why wasn't the checkbook just given to Mr. Parker at the Bank?
>
> THE WITNESS: Because --
>
> JUDGE GONZALES: Was it always your intention to give them to Mr. Parker?
>
> THE WITNESS: Yes it was, but I stuck them in my briefcase and I forgot --
>
> JUDGE GONZALES: You inadvertently kept them, is that it?
>
> THE WITNESS: Yes.

Tr. 3400. When questioned about the applicant's books and records, Van Osdel responded:

> Q. Mrs. Van Osdel, who maintains the records of the capital accounts on the books of the partnership or the partnership books, the limited partnership books?
>
> A. Mike Parker.

Tr. 2113-14. Moreover, SBB's Certificate of Limited Partnership states:

> that the address of the partnership's principal place of business in Washington is San Bernardino Valley Broadcasting Company, a Washington limited partnership, care of San Bernardino Valley Broadcasting Company, 4041 Rustin Way, Suite 1-D, Tacoma, Washington.

Tr. 2088-89. The Tacoma address of SBB is of course Parker's, not Van Osdel's.

17. Other record evidence affirms that Van Osdel's role was purely nominal. Thus, as to the substance of SBB's application:

> Q. Mrs. Van Osdel, what information did you contribute to this application?
>
> A. Personal information.
>
> Q. For example?
>
> A. Name, address.
>
> Q. Who did you provide that information to?
>
> A. Kim O'Neal.
>
> Q. And again Kim O'Neal at that time was employed by Mr. Parker?
>
> A. Yes.
>
> Q. Did you choose the engineer?
>
> A. No.
>
> Q. Did you choose communications counsel?
>
> A. No.
>
> Q. Had the remainder of this application been filled in when you signed it.
>
> A. I reviewed it.
>
> Q. You reviewed it.
>
> JUDGE GONZALEZ: I don't believe that is responsive.
>
> * * *
>
> Q. Were all of the questions in the application answered at the time you reviewed it?
>
> A. Yes.

Tr. 2112-13. As another illustration, Parker also arranged for the equipment leasing for the station, and Van Osdel was asked:

> Q. Do you know what equipment you intended to lease?
>
> A. No, I don't.
>
> Q. Do you know who procured that letter for the applicant?
>
> A. Mr. Parker.
>
> Q. Do you know who he spoke with?
>
> A. No, I don't.
>
> Q. Do you know if Mr. Parker had a previous relationship with Republic Leasing.
>
> A. No, I don't.
>
> Q. Do you know anything about the Utility Finance Corporation?
>
> A. No, I don't.
>
> Q. Did you ever procure a proposal from the Utility Finance Corporation?
>
> A. Not to my knowledge.
>
> Q. Do you know if anyone on behalf of the applicant ever procured a proposal from Utility Finance Corporation?
>
> A. I don't know that.

Tr. 3401-02. One final example, though, will impart the true substance of Van Osdel's role and highlight the speciousness of Van Osdel's claims of exclusive control over SBB:

> Q. Ms. Van Osdel, you also said that you saw an opportunity to meet the programming of the community, and that was one of the reasons you got involved, is that correct?
>
> A. That's correct.
>
> Q. But you didn't have anything whatever to do with developing the program percentages which were originally placed on the application, did you?
>
> A. No, I didn't.

Tr. 3595. Parker, naturally, had devised SSB's proposed television programming, the very essence of a station's most elemental activity.

18. After finding that significant and material questions of fact surrounded SBB's claim that Van Osdel was the sole controlling party in its application, the ALJ added against SBB the aforementioned real-party-in-interest issue. As if to evidence Van Osdel's purported new supremacy, the applicant hastily reported back that Parker's consultancy had been inexplicably and summarily "terminated." *I.D.*, para. 55. But, citing *National Black Media Coalition v. FCC*, 775 F.2d 342, 356-357 (D.C. Cir. 1985), the ALJ correctly held that actions *post litem motam* are entitled to little evidentiary weight, and Parker's alleged "termination" occurring after the ALJ's addition of the real-party-in-interest issue is wholly unpersuasive. Having reviewed, in totality, the underlying record on this matter, we find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by SBB, but a convenient vizard. She can claim no serious or material role in SBB's most elementary affairs. SBB is a transpicuous sham, *compare Pacific Television*, *supra*, and the ALJ justly rejected its attempted fraud.[21]

19. *A & R.* Relying upon our decision in *Cotton Broadcasting Co.*, 104 FCC 2d 473, 475-477 (Rev. Bd. 1986), the ALJ rejected A&R's claim for ownership "integration" credit because all of its principals (save one, Charles E. Walker, a 27.5% equity partner) are denominated as both "general" partners of A&R and, at the same time,

"limited" partners. *See I.D.*, paras. 102, 133. The ALJ also found that Walker, identified as A&R's managing general partner prior to the "B" cut-off date (but now depicted as merely a "limited" partner), was, and will be, the dominant principal of the subject group. A&R asserts that its partnership complies with state law and that its activities and its ownership structure prior to the "B" cut-off deadline are irrelevant.

20. We shall affirm the ALJ's denial of "integration" credit to A&R because the Commission has made clear that, while it will ordinarily accept the premise that "limited" partners are purely passive investors who take no part whatsoever in company management, any management-type activities evidenced by such principals negates the efficacy of the claim of "limited" partner status. *See Attribution of Ownership Interests*, *supra* note 6, 97 FCC 2d at 1022-1023; *on reconsideration*, 58 RR 2d at 616-620. It is true, as A&R's exceptions contend, that the regulatory purpose behind the Commission's premium on ownership "integration" is to strengthen "the bond between legal responsibility and day-to-day management authority."[22] The problem here, however, is that all of A&R's principals (including Walker) are apparently unable to determine whether they wish the tightly confined personal liability of "limited" partners or the plenary management authority and responsibility of a company's "general" partners. Declining to make that fundamental election, the majority of A&R's principals wish to be regarded as both - and at once. While the Board appreciates that there could be some unspoken business reasons for principals to adopt the bifurcated equity allocation reflected in A&R's dualistic partnership structure, and it is equally cognizant that the Commission desires to accord all applicants flexibility in "structuring [their] business proposal" without "second-guess[ing] an applicant's business judgment - so long as it is, in fact, a good faith business decision," *Victory Media, Inc.*, 3 FCC Rcd 2073, 2075 (1988), we decline to speculate here whether the majority of A&R's principals intend to assume all full legal responsibility for their company or, instead, retreat to the legal shelter of their concurrently alleged "limited" partnership status. Moreover, even if we were to ignore entirely the "limited" partnership elements of the A&R structure as to its five "dual" partners, we could award A&R no more than a 73% quantitative "integration" factor, because Charles E. Walker - presumably bound by the identical "limited" partnership constraints as his five associates - has been shown on this record to be a very active principal indeed, and not a mere passive investor. Recalling that, up until the "B" cut-off date, Walker had exercised all powers and prerogatives as A&R's managing general partner, the ALJ found that even after that date Walker took a highly active role in A&R's basic business affairs. Thus:

> Mr. Walker continued to be actively involved in prosecuting A&R's application even after he resigned as general partner. Mr. Walker took an active role in discussions among A&R principals with respect to matters concerning the applicant (Tr. 2381). He continued to attend A&R meetings (Tr. 2333), and he continued to vote on matters on the agenda of the partnership (Tr. 2334-35). Mr. Walker also approached Ms. Shelton about joining the partnership, after he had already converted his interests from that of a general partner to a limited partner (Tr. 1029). As a limited partner, he also retained significant voting rights.

I.D. at para.135. The underlying record affirms the ALJ's determination that Walker, who deliberately altered his nominal status on the "B" cut-off date "so as to receive enhanced comparative credit" (A&R Exceptions at 5), must be regarded not only as an active partnership principal, but the dominant figure of the whole A&R combine. Walker has not been, nor is he now, a mere passive investor, totally and securely insulated from A&R's affairs, so the ALJ was correct in disregarding Walker's putative "B" cut-off switch to "limited" partnership status. All in all, A&R is plainly not what it purports to be; and even if it were, the institutional schizophrenia of those principals who desire to be regarded simultaneously as "limited" (*viz.*, "passive) and "general" (*viz.*, "active) partners bespeaks of an applicant unprepared to equate full legal liability for their company with a *corresponding* degree of management authority and responsibility. *Cf. Greater Wichita Telecasting*, *supra* note 22, 96 FCC 2d at 989. A&R cannot have it both ways, and then expect the Commission to decide which modality reflects its genuine character.[23]

21. *Solano*. As it was with ancient Gaul, Solano is a tripartite formation consisting of (1) Solano Broadcasting Company (SBC), itself a partnership of four individuals (Henry T. Mendoza, III; David Garcia; Annabel R. Verches; Patrick D. Pattison) reported to hold 20% of Solano's total equity; (2) C30-I, a partnership consisting of fifteen different individuals; and (3) C30-II, a partnership consisting of yet six additional individuals. *I.D.*, paras. 63-64. Solano would have it that the four SBC principals are Solano's only "general" partners, whilst C30-I and C30-II are but "limited" partners in the larger Solano confederation. Because he found that at least several of the principals of C30-I and C30-II went greatly beyond the roles of mere "passive" investors, and took an active part in arranging and directing Solano's most basic business affairs, the ALJ counted both C30-I and C30-II as tantamount to "general" partners. Since only the four SBC principals are proposed for actual "integration" into the management of Solano's intended station, the ALJ awarded it "at most" a 20% quantitative "integration" factor, corresponding directly to SBC's 20% equity share of the larger Solano enterprise. *Id.*, para. 98.

22. In determining that at least several of the principals of C30-I and C30-II - Solano's putative "limited" partners - were exceedingly active in the affairs of Solano, the ALJ found, for example, that James F. Parker (a 12.65% partner in C30-I) and Michael Rosenbloom (a 23.33% partner of C30-II) were largely responsible for organizing Solano, drafting its partnership documents, and generally orchestrating the affairs of the SBC "general" partners. *Id.*, para. 93. Both Parker and Rosenbloom, who are Solano attorneys, were extensively consulted throughout the application process, *see id.*, para. 95-96, and the ALJ concluded that the purported "general" partners of SBC were fundamentally ignorant of Solano's financial plans (including the very basis on which Solano certified as to its financial ability on its application). *Id.*, para. 95. The ALJ also held that "Solano's limited partners also took an active role in selecting the principals of Solano's general partners as well as determining their specific roles at the

station." *Id.*, at para. 96. Without generally refuting the ALJ's portrayal of the activities of certain principals of C30-I and C30-II, and more specifically the activities of attorneys Parker and Rosenbloom, Solano's exceptions contend that the ALJ's "conclusions bear absolutely no relationship to the actual record evidence" but rather "rely on a pick and choose approach, with [record] citations to a handful of out-of-context questions and answers and serious distortions of the facts."[24] Thus, Solano submits that three out of SBC's four "general" partners have appreciable broadcast experience, and it was their decision to seek the financial support of a "limited" partnership to obtain the necessary backing for the station.[25] Moreover, Solano contends that the "limited" partners of C30-I and C30-II have exerted no influence over SBC or its principals, and will exercise no control over Solano's future business affairs. Its exceptions highlight transcript citations claimed to support the proposition that SBC's four "general" partner principals were, in fact, actively involved in the preparation of the application and the conduct of Solano's later activities.

23. Before we review the actual record, we must confront a preliminary matter of law relating to the question of whether attorneys who actively participate in the affairs of a broadcast applicant may be considered "passive" investors of the applicant, so that the equity interests of such attorneys are not attributable for our purposes of calculating their applicant's "diversification"[26] and "integration" factors. Solano's exceptions do not deny that Parker and Rosenbloom have been very actively involved in the applicant's affairs to date, at least to the extent of providing critical legal advice throughout the whole of Solano's existence. *See* Solano Exceptions *passim*. But, as expressly discussed in several recent cases, the Commission has held, as a matter of law, that attorneys who hold equity interests in an applicant and who simultaneously perform legal services for that applicant cannot be considered mere "passive investors." Hence, in *Mark L. Wodlinger*, FCC 88R-29, released June 1, 1988 (at para. 9), the Board applied the policy set forth in the Commission's *Clarification on Ownership Attribution*, 1 FCC Rcd 802, 804 (1986)(emphasis added), which holds that such attorneys must be considered "active" principals because:

> it would be difficult to envision legal services that are more directly related to the media activities of the partnership than those concerning the licensing and operation of broadcasting entities.
>
> * * *
>
> A partner whose contribution to the partnership is in the form of personal services and expertise rather than in the form of a financial investment *is the antithesis of a passive investor.*

In *Wodlinger*, therefore, the Board attributed to the affected applicant the 50% equity interest of an attorney who had played an active role in the affairs of that applicant, thus reducing its overall quantitative "integration" factor to 50% because the *Wodlinger* attorney, like Parker and Rosenbloom here, did not propose to actually "integrate" into the station's management. *Accord*, *Washoe Shoshone Broadcasting*, 88R-30, released June 13, 1988 (at para. 18) (Rev. Bd. 1988)(attorney's 20% equity interest not excluded from his applicant's "integration" calculations).

24. In view of the extensive involvement of attorneys Parker and Rosenbloom in Solano's most basic operational affairs and the conclusive presumption of "active" participation of attorneys iterated in the Commission's 1986 *Clarification on Ownership Attribution*, it is manifest that the Board cannot consider those two Solano principals to be purely "passive investors," and *Wodlinger* is now controlling as case precedent.[27] A more difficult question here, though, is whether to include in our "integration" calculations only the personal equity interests of Parker and Rosenbloom, or whether Parker's participation in Solano's affairs was in a representative capacity for *all* of his C30-I co-partners, and that of Rosenbloom for his C30-II co-partners, with the net result that both of these two "limited" partnership legs of the Solano triumverate must be considered "active" members of the composite applicant. Based on the record in this proceeding, we must find that C30-I and C30-II, acting through Parker and Rosenbloom respectively, exceeded the Commission's boundaries for true "limited" partners. As reaffirmed several times, the Commission has indicated that it will not consider "passive" any principal of a broadcast licensee where that putatively passive principal has any material involvement in the subject entity's affairs. *See, e.g., Ownership Attribution, supra* note 6, 58 RR 2d at 616-620. Through Parker's representation, the C30-I partners have here been materially involved in Solano's affairs to this date. The same must be said of the C30-II principals who, through their representative partner, Rosenbloom, have gone beyond the Commission's declared "active"/"passive" borders.

25. But even if we put aside, *arguendo*, the "active" status of Parker and Rosenbloom in orchestrating and directing Solano's most basic affairs, other substantial evidence of record creates serious doubts that the four "general" partner principals of SBC were ever truly at the helm of the Solano enterprise. For instance, although the Commission's current broadcast application form (FCC Form 301) does not even solicit the identities of an applicant's "limited" partners, the "general" partners must certify - under penalty of perjury - that "sufficient net liquid assets are on hand or available from committed sources to construct and operate for three months without [operating] revenue." FCC Form 301, Section II. In that regard, the Board has held that the so-called "active" principals - who bear the factual and legal burden of FCC application certification - may not for certification purposes rely simply upon the undocumented assurances of the applicant's "passive" principals that all of the necessary finances will be forthcoming, without acquiring first-hand knowledge of the sufficiency of the assets upon which their personal certification is based. *Las Americas Communications, Inc.*, 1 FCC Rcd 786, 787-789 (Rev. Bd. 1986). To permit such principals to certify to their financial resources on nothing but the undocumented assurances of other "passive" principals would be to negate entirely the efficacy of the sworn certification itself.[28] Here, the record reflects that - at very best - only one of Solano's four "general" partners had an understanding of Solano's potential financial resources. Indeed, at hearing,

SBC's President (and 31.67% equity holder), Henry T. Mendoza, was questioned about Solano's finances and its FCC financial certification:

> Q. Did you at the time know what -- was it your understanding that the basis for this certification was bank financing?
>
> A. Not bank financing.
>
> Q. What was your understanding of the source of the funding?
>
> A. My understanding of the source of the funding was that the limited partners had guaranteed that they could come up with enough money to operate the station as we proposed to do it if we got the license.
>
> Q. Had you ever been shown financial documentation supporting that proposition, balance sheet, financial --
>
> A. Me personally?
>
> Q. Yes.
>
> A. No.
>
> Q. Do you have any knowledge whether Mr. Pattison was shown that documentation?
>
> A. I have no knowledge.

Tr. 579. Although Solano claims that SBC "general" partner Patrick Pattison was aware of Solano's financing, none of the other three "general" partners exhibited an inkling of the basic financing of their proposed station. In fact, when questioned at hearing as to whether he understood his liabilities as a "general" partner of Solano, David Garcia (one of SBC's four principals) replied: "No." Tr. 664. Although Garcia testified that he "glanced" at Solano's limited partnership agreement, he did not know any of its "limited" partners, Tr. 658-660, and he indicated that Rosenbloom had informed him of the identity of SBC's other "general" partners, none of whom Garcia had ever even met. Tr. 661. Garcia also testified that he was not informed of the structure of the company to which he had already lent his name, Tr. 662, and that he did not even inquire as to who his new "limited" partners were. *Id.* Pattison, another SBC "general" partner, and its proposed station general manager, was equally uncertain of the role of Solano's "limited" partners:

> Q. Do you know what the financial involvement and when I say you, do you or to your knowledge does Solano Broadcasting Company know what the financial involvement of the limited partners have been to this point?
>
> A. The financial involvement?
>
> Q. Yes.
>
> A. No.

Tr. 851. Finally, it appears from the Solano "limited" partnership agreement that the putative "limited" partners are liable for *all* of Solano's liabilities and that, upon any default of a "general" partner in paying his (or her) debts to the "limited" partners (who have the *exclusive* right to lend money to the "general" partners for Solano expenses), the "limited" partners may choose new "general" partners. *I.D.*, para. 97. And nothing on this record suggests any ability whatsoever on the part of the four current "general" partners to repay the "limited" partners for their collective 20% equity interest in Solano.

26. Considering all of the foregoing, we cannot find that the four SBC "general" partners have exclusive control over Solano. Solano, based on this record, is nothing more than the artificial construct of two very enterprising attorneys, who put the application together, assembled the (presumed) financing package, and then recruited four putative "general" partners who were not only unfamiliar with each other or their own "limited" partners, but whose general knowledge of the venture to which they had nominally committed themselves was *de minimis*. Hence, we will not affirm even the (maximum) 20% "integration" credit awarded to Solano by the ALJ. Without going so far as to label Solano a "sham" (for we have seen far worse), we reject its most critical claim that the SBC "general" partners are the controlling principals of this applicant.

27. *Buenavision*. The ALJ found that although Buenavision purports to be a partnership composed of three individuals, H. Frank Dominguez (51%), Sylvia Herrera (5%), and Stella Ornelas (44%), all of whom have pledged to "integrate" fulltime at the proposed station, he refused to award this applicant a 100% quantitative "integration" factor. His refusal was based upon two discrete grounds: First, citing *Payne Communications, Inc.*, 1 FCC Rcd 1052, 1055-1057 (Rev. Bd. 1986), the ALJ noted that Buenavision was not secured by a written partnership agreement, either at the time it filed its application or during the hearing, and that, therefore, he could not accept the applicant's quantitative reckoning, *I.D.*, para. 161; and, second, the ALJ found that Dominguez, who owns numerous other communications interests (*see supra* para. 6; *I.D.*, paras. 158-160), has not in fact treated Buenavision as a partnership at all, but as a sole proprietorship wherein Ornelas and Herrera "are nothing more than nominal partners with no influence or control" over Buenavision's affairs. *I.D.* at para. 164. Buenavision argues that it should not be bound by *Payne* retroactively, and that Ornelas and Herrera are genuine partners who will have ownership responsibilities at the proposed station.[29]

28. As explained in *Payne*, the Commission's award of a preference for ownership "integration" credit is premised upon its expectation that applicants who receive such a preference will adhere to their pledges "on a permanent basis," *Policy Statement*, 1 FCC 2d at 395 n.6; *see also Reginald A. Fessenden Educational Fund*, 100 FCC 2d 440, 451 (Rev. Bd. 1985), *review denied*, 59 RR 2d 1267 (1986), and that mere oral understandings - terminable at will or whim - provide insufficient assurance of the stable ownership structure necessary to predict such permanence. *See Payne*, 1 FCC Rcd at 1056. Moreover, our *Payne* decision observed that, until a paperwork reduction revision of our broadcast application form, all applicants were required to submit therewith their basic organizational documents so that the Commission could be completely certain of the actual identities of the applicants' equity holders as well as the legal nature and extent of those equity interests. *Id.* In revising its broadcast application form in 1981,[30] the Commission merely eliminated the prior requirement that an applicant *submit* its organizational documents to the Commission at the time of application; but, the application form itself (FCC Form 301, General Instruction E) contin-

ued to require that such documents "be made available for inspection by the public." Nothing in the Commission's 1981 revision of its Form 301 relieved an applicant of the obvious necessity to *actually be* of legal form and substance at the time of application. Unless an applicant possesses a formal legal identity and structure at the time of application, it is unclear to whom any Construction Permit grant should be made.[31]

29. The case at hand provides a perfect example of just why we cannot accept, for critical comparisons between applicants, a claim that an applicant is bound together by nothing more than an "oral understanding." For as the ALJ here found, Buenavision is - in soul, spirit and substance - the creature of Frank Dominguez. We have reviewed the underlying record and find that the ALJ synopsized accurately and well the facts surrounding the Buenavision application. Thus:

> Ms. Ornelas and Ms. Herrera had not even spoken to each other until the date of the hearing (Tr. 1195), and there had been no partnership meetings or telephone conferences between the partners concerning the partnership business (Tr. 1122, 1195). Neither person had any input concerning the decision to establish the Executive Committee which is charged with running the station (Tr. 1176, 1232), and both testified that they did not discuss their proposed management positions with anyone, including Mr. Dominguez (Tr. 1164, 1189-92, 1205-06, 1226-27). Ms. Ornelas first learned of her position as Public Affairs Director from reading Buenavision's integration statement after it had been filed (Tr. 1191, 1206-07). Ms. Herrera learned of her position as Community Affairs Director in the same manner (Tr. 1226).

I.D., at para. 163. Moreover:

> there were no discussions prior to the filing of the Buenavision application between Mr. Dominguez and Ms. Herrera as to the terms of the partnership (Tr. 1225- 26, 1235). In addition, nothing was said as to her particular role at the station (Tr. 1215-16, 1218-19), what her salary would be (Tr. 1235), or about the nature of the partnership's management structure (Tr. 1228). Similarly, no one explained to Ms. Ornelas the substance of any of the terms of the preexisting oral partnership agreement when she was brought into the partnership just shortly before the B cutoff date (Tr. 1167). She testified that she first learned of her 44 percent interest in the applicant one week after the B cutoff date amendment was filed (Tr. 1167, 1189-90). Ms. Ornelas did not discuss the matter with Mr. Dominguez (Tr. 1118), and no one asked her if she agreed to take a 44 percent interest and presumably, no one asked her whether or not she could afford such an interest (Tr. 1167-68). As of the date of the hearing, the only terms of the Partnership Agreement apparently decided among the partners were each partner's share in the station's profits, the equal voting provisions, and each partner's responsibility for a portion of the debt of the venture (Tr. 1073, 1166). No other terms which are typically indicated in a partnership agreement were even discussed, such as what happens on the death of a partner (Tr. 1233). All of these decisions were left entirely up to Mr. Dominguez.

I. D. at para. 162. We firmly agree with the ALJ that this is no *bona fide* "partnership", in word or deed, but a wholly fictional contrivance of Dominguez, knowingly intended to artificially skew our comparative processes. *See generally supra*, para. 8 & note 15. While we make nothing of the ALJ's conclusion that Dominguez has "controlled" Buenavision (Dominguez is openly said to hold a 51% interest), we find that the other two purported principals were hastily recruited as partners in name only, and that neither had any clear idea of any rights or obligations (particularly financial) they might now have, or incur in the future, as Buenavision principals. Or of any actual managerial authority or responsibility at the proposed station. Buenavision is all smoke, and Dominguez the smoke machine. At very best, Buenavision would garner only a 51% "integration" factor for Dominguez, leaving it far out of the running. At worst, it is yet another sham. *See Pacific Television, supra.*

30. *SSP*. The ALJ awarded SSP a 51% quantitative ownership "integration" factor, corresponding directly to the percentage equity interest of Sandra S. Phillips, the sole "general" partner of the applicant, and the only SSP principal proposing to be involved in the management of the intended broadcast facility. *I.D.*, para. 168. The remaining 49% of SSP, a California limited partnership, is the ARW Company, whose stock - in turn - is wholly owned by Larry Hillblom. *Id.* Although SSP's 1983 limited partnership agreement conforms to the Uniform Limited Partnership Act (as well as to state law), the ALJ declined to regard the 49% equity holder (ARW) as "passive" because SSP's agreement:

> contains no provision restricting the limited partner or any of its principals from being an employee, agent or consultant to the partnership's proposed station, or otherwise prohibiting the involvement of the limited partner or its principals in the operations of the proposed station. Furthermore, the Agreement is silent as to the financial obligations of the principals, although it appears from the testimony that the parties to the Agreement view Ms. Phillips as having no obligation to make any capital contributions to the venture (Tr. 1291-92).

I.D. at para. 176. On exception, SSP complains that its 1983 limited partnership agreement complies with the general FCC requirements in effect at the time it was formed,[32] and that the Commission did not (1) even enunciate its limited partnership requirements until its 1984 *Ownership Attribution* report; or (2) begin to require the explicit contractual provisions referenced by the ALJ until a 1985 reconsideration of its *Ownership Attribution* report. *See supra* note 6. Arguing that it has been unfairly victimized by the retroactive application of the Commission's 1985 *Ownership Attribution* reconsideration standards to a limited partnership agreement executed in 1983, SSP cites our language in *Independent Masters, Ltd., supra*, 104 FCC 2d at 188 n. 25, for the proposition that we should not apply literally the greatly strengthened 1985 limited partnership insulation standards to entities formed prior thereto.

31. We concur with SSP's reading of *Independent Masters*. *See also Chester Associates*, *supra*, 2 FCC Rcd at 2031 n.9. In *Chester*, the Board explained further that while it would not retroactively demand literal compliance with the strictures of the Commission's 1985 *Ownership Attribution* reconsideration, it would generally consider the Commission's *Ownership Attribution* requirement that limited partnership agreements assure that the "limited" partners not be "involved in any material respect in the management or operation" of the subject partnership. *See Ownership Attribution*, *supra* note 6, 58 RR 2d at 618 (quoting original 1985 *Ownership* Attribution order, 97 FCC 2d at 1023). SSP here concedes that its limited partnership agreement does not contain the specific contractual clauses articulated in the 1985 Ownership Attribution reconsideration order. But, as in *Chester Associates*, the SSP agreement is said to incorporate the ULPA, a contention no party here seriously challenges. Furthermore, SSP submits that its "limited" partner (ARW) had no input into the application prior to its filing; that its "general" partner (Phillips) did not consult with the "limited" party as to any aspect of prosecuting the SSP application; and that[33]:

> By executing the Certificate of Limited Partnership, SSP was certifying under oath to the State of California that its Limited Partner would not be involved in the day-to-day operation of the business and would not otherwise exert control of the management of the business. In specifying in Paragraph XV that limited partners are given no rights to elect or remove a general partner, terminate the partnership, amend the agreement, or sell assets, SSP was further limiting the minimal statutory powers granted its Limited Partner. On its face, SSP has fully demonstrated that the de jure control of SSP is firmly lodged with the General Partner. The Partnership Agreement and the record itself are in direct contravention to the Findings of the Judge below.

Nothing in the *I. D.*, or in the underlying record, or even in the exceptions discredits these SSP representations. Accordingly, we must agree with SSP that the ALJ's conclusion that SSP's "limited" partner will not assume a "passive" role in this partnership's affairs is not supported by the requisite substantial evidence of record. Although the ALJ seems to have assumed that because the "limited" partner here would be furnishing virtually all of SSP's initial financing, it - not Phillips - would possess *de facto* control, *see I.D.*, para. 176, we cannot endorse that presumption. It is true, we concede, that the Commission until very recently regarded financial domination (or even strong financial leverage) to be a very strong indication of *de facto* control, or potential *de facto* control. *See, e.g., Heitmeyer v. FCC*, 95 F.2d 91, 99 (D.C. Cir. 1937)("It is well known that one of the most powerful and effective methods of control of any business, organization, or institution . . . is the control of its finances"); *accord WLOX Broadcasting Co. v. FCC*, 260 F.2d 712, (D.C. Cir. 1958); *Stereo Broadcasters, Inc.*, 87 FCC 2d 87, 95 (1981)(control of finances one of the factors considered "most indicative" of control). Whatever the Commission's past equation of financial control with ultimate *de facto* control of an entity, it is obvious from recent case law that the Commission no longer draws a strong correlation between the two. *E.g., KIST Corp., supra*, 102 FCC 2d 288, 290-291 (1985); *Victory Media*, *supra*, at para. 9 & n.1.

32. For all of the foregoing reasons therefore, we shall modify the ALJ's "integration" award to SSP, and elevate its quantitative factor to the 100% to which it is by operation of law entitled, *i.e.*, by extrapolating Phillips' 51% equity interest as SSP's sole "general" partner to an *effective* 100% management control factor.

33. *Good News*. After considering the totality of the record evidence, the ALJ rejected this applicant's central claim that it is, and will in the future be, solely controlled and managed by its 10% "general" partner; rather, he found that the applicant is a product of, and controlled by, Good News' 90% "limited" partner, Elias Malki Middle East Gospel Outreach, and - more specifically - Elias Malki himself. *See I.D.*, paras. 198-204. The ALJ reports that, until the "B" cut-off deadline, Malki "was president of [the] applicant's general and limited partners" and "was also designated to serve as general manager of the proposed station." *Id.*, at para. 196. However, when advised by counsel that he should resign as president of the "general" partner (then composed of four individuals), Malki replaced himself as President of the "general" partner with his own daughter (Rebecca Ekizian), who is now said to be the chief "general" partner in the Good News combine. Notwithstanding Malki's alleged withdrawal from the "general" partnership, Malki - as president of Good News' 90% "limited" partner - was seen by the ALJ as continuing to be the dominant Good News principal. For example, the ALJ notes that even after the Good News partnership agreement was amended, Malki attempted to retain control of Good News by providing in the revised agreement that his "limited" partnership would retain the power to unilaterally remove any "general" partner. *Id.*, para. 198. Later, upon advise of counsel, that particular provision was removed; but:

> The amended Agreement, however, continues to provide that no additional persons can be admitted as either a general partner or a limited partner without the written consent of the limited partner (SSP Exh. 6, Provision 9; SSP Exh. 7, provision 9). Furthermore, the Agreement is silent as to how the parties' interests are voted in partnership matters. One of the directors of the general partner testified that the limited partner votes its 90 percent interest and each of the three directors of the general partner individually votes her respective 3 1/3 percent interest (Tr. 1340-41, 1343).

Id. In its exceptions, Good News concedes Malki's total dominance of the applicant up until the "B" cut-off deadline, but submits that the record evidence is insufficient to show that its three "general" partners have not controlled Good News since Malki's reluctant withdrawal as managing "general" partner. It relies primarily upon the Commission's decision in *KIST Corp.*, *supra*, for its postulate that the Commission will accept, at face value, even the most improbable claims as to ownership structure and management control, if the written partnership agreement establishes "the proper division of authority."[34]

34. We find that neither *KIST Corp.* nor any subsequent case stands for the proposition that the Commission will ignore any and all extrinsic evidence that an applicant's purported ownership structure falsely portrays the true and actual locus of control in that entity. Indeed, *KIST* itself is a testament to the heightened scrutiny to be given an application where it appears that the party actually controlling an applicant contrives to camouflage that control by interposing a false layer of purportedly "active" principals so as to artificially enhance its comparative position. Specifically reaffirming in *KIST* its previous warning that it would sharply strike down any "sham" applications, *see id.*, 102 FCC 2d at 290 n. 5, the Commission affirmed the Board's rejection of an application where the alleged "active" principal (1) "exercised virtually no control over the preparation of the application"; (2) "had no involvement in obtaining financial commitments"; (3) "ha[d] contributed no capital to the enterprise; and (4) where the putatively "passive" principal had "clearly dominated the affairs" of the applicant. *Id.*, at 292-293 n.11. Likewise, in *Pacific Television, supra*, the Commission rejected as a "sham" the application of an entity where an allegedly "active" principal was uncertain as to even the voting structure of the partnership, *see id.*, 3 FCC Rcd at 1700, and where the equity contribution of that principal had been paid by her brother, another partner, a contribution to be "reimburs[ed] at some unspecified time in the future" (*id.*).

35. The record evidence against Good News is, if anything, much stronger than that laid out by the Commission in *KIST* or *Pacific Television*. Good News concedes, as it must, that until Malki's last-minute withdrawal as its President (in favor of his own daughter), Malki made all of the decisions concerning the application, including the form and contents of the Good News application itself.[35] Further, it's exceptions acknowledge "that Elias Malki paid the general partner's [sic?] initial capital contribution, and . . . assumed the financial responsibility for prosecuting [Good News'] application."[36] And, other than Malki, none of this applicant's principals, and especially its reputed "general" partners, exhibited more than the slightest acquaintance with the company they reputedly "controlled". Thus, as the ALJ found, one of the three putative "general" partners, Shirley Robbins (Good News' Secretary), had not maintained the applicant's books and records. Tr. 1321. Even more basically, when asked how the partnership would function, Robbins testified:

> Q. On a matter on which the partnership as a whole must vote, does the limited partner vote its 90 percent interest and the general partner its 10 percent interests?
>
> A. Yes.
>
> Q. At a meeting of the limited partnership, who will vote for the general partner?
>
> A. Who will vote for the general partner?
>
> Q. Yes.
>
> A. The general partners.
>
> Q. You'll all vote three and one-third percent or will one person vote the 10 percent?
>
> A. No, no. The three.
>
> Q. All three of you will vote your respective shares?
>
> A. Right.

Tr. 1340-1341. In other words, Robbins seemed to believe that the three "general" partners would command only 10% of the vote on critical business matters. She also testified that Malki never told her of his own investment in the station, Tr. 1344, and that - even as the partnership's purported Secretary - she could only recall "some" of the details of the Good News partnership agreement. Tr. 1347. Incredibly, Robbins acknowledged that she had never met Ekizian, with whom she had casually agreed to become a "general" partner, and who - for reasons Robbins was unaware of - became the instant President of Good News when her father "withdrew" for strategic reasons. Tr. 1348. It seems to have neither occurred nor mattered to Robbins that she had just taken on an unknown business partner (Ekizian) who, as President of the "general" partnership, could bind the partnership (and Robbins personally) to the enormous legal and financial liabilities attached to the construction and operation of a full power television station.

36. Just as implausible was the testimony of a second Good News' "general" partner, Viola Douglas. While identified as the partnership's Treasurer, Douglas had very little knowledge indeed of her company treasury. She did not recall who opened the "general" partner's bank account, Tr. 1483, and she did not know how she got its checkbook. Tr. 1486-1487. Equally as astonishing, Douglas evinced no understanding of the impact of her new "general" partnership on her *personal* treasury. For instance, Douglas could not say for certain whether she was legally obligated for any of Good News' expenses in prosecuting this application; when asked whether such expenses were solely the responsibility of the "limited" partner, Good News' Treasurer responded:

> Q. That's entirely the limited partner's responsibility? I'm waiting for an answer. Is that entirely the limited partner's responsibility?
>
> A. I can't say it's a responsibility, but I believe – well, I'll withdraw that because I don't know. I would hate to place something on – and then it's not there.

Tr. 1509-1510. Good News' President, Ekizian, knew even less than her Treasurer about the applicant's finances. *See I.D.*, paras. 200, 201 (and transcript passages cited therein). Finally, although Good News asserts that Malki retreated to the role of a "limited" partner prior to the application amendment deadline, the "general" partners seem to think that they will be "working together" with Malki once their application is granted. *See, e.g.*, Tr. 1396.

37. For these reasons, as well as those additionally expressed by the ALJ at *I.D.*, paras. 202-203, we affirm his conclusion that Good News is (not surprisingly) controlled by its 90% owner, Elias Malki. Ignoring, for the moment, the minimal 3 1/3% equity interest of each of the three "general" partners (equity interests so insignificant that they are, in fact, not even cognizable by the Commission as palpable ownership interests in media properties, *see Ownership Attribution, supra* note 6[37]), and the fact that the 90% equity principal, Malki, had furnished every material element of the entire Good News application, in-

cluding all of its financing, its lawyers, and its engineer, the preponderance of the other record evidence demonstrates that the three so-called "general" partners are no more than paper proxies for Malki. As was the case with San Bernardino Broadcasting (*supra*, paras. 15-18) and Buenavision (*supra*, paras. 27-29), Good News is another of those "'sham' ownership structures" artificially projected "to take advantage of various comparative preferences" (*see supra* note 15). The last-minute "withdrawal" of Malki was exposed on this record as transparent legerdemain, which fooled no one, least of all Malki's three hasty conscripts, who knew (or disinterestedly assumed) from the outset that they were essentially window dressing in Malki's Middle East Gospel Outreach boutique. As did the ALJ, we say: No sale!

38. *Inland Empire*. Structured also as a two-tiered partnership, with three "general" partners and nine "limited" partners, Inland Empire as well sought a 100% quantitative "integration" factor for proposing that all three of its "general" partners (owning just over 23% of the partnership's total equity) would actively manage the intended station. Its "limited" partners, it contended, are purely passive investors. All three "general" partners (David Duron; Robert Navarro; Susan Racho) have lived in the station's proposed service area for many years and have extensive past broadcast experience. *See I.D.*, paras. 206-220. Unlike several (if not most) of the other applicants here, it appears, *mirabile dictu*, that one of Inland Empire's "general" partners, David Duron, actually took the lead in creating this applicant, structuring its organization, selecting the other two "general" partners for their broadcast experience, local residence, civic activities, *etc.*, and in seeking out resource support from "limited" partners. *See id*, para. 235.[38] Although the record is devoid of incriminating evidence that this applicant is a sham in which - as we have seen with several other applicants above - the so-called "passive" principals were, in fact, the *active* parties (and *vice versa*), the ALJ awarded Inland Empire only a 42.8% quantitative integration factor to correspond directly to "general" partner Duron's "voting" shares of the partnership. *See id.*, paras. 205, 235(a). The ALJ's reasoning stemmed from his reading of two disparate sections of Inland Empire's partnership agreement: Section 7(b), which the ALJ read as providing that "four-fifths of each general partner's interest will vest in stages over a four-year period of time, and each stage in the vesting process is dependent upon that general partner's continued employment at the station" (*I.D.* at para. 232, citing SBB Exh 6.); and Section 12(a) which gives the managing "general" partner (Duron) the right to discharge either of the other two "general" partners as station employees without a showing of good cause. *Id.*

39. Inland Empire's exceptions rejoin that, in construing its partnership agreement, the ALJ read its Section 7(b) out of context. It argues that all three of its "general" partners currently have vested their full equity interests, and that Section 7(b) becomes operative only if a "general" partner elects to quit the partnership or if such a partner is removed by a vote of 80% of the other partners "for good cause, which is limited by definition to four discrete circumstances: death, conviction of a felony, disability for a period of six months, or engaging in an act which could result in the partnership being disqualified as a licensee."[39] It further points out that its Section 7(b) is expressly captioned "Vesting of General Partner's Partnership Interest When Terminating as a General Partner", and that the condition that a "general" partner will lose a portion of equity interest only if he or she does not fulfill the obligation to stay for five years to manage the station compliments perfectly the Commission's requirements that an "integration" pledge reflect an intention to remain for a considerable period (*see supra* para. 28, citing *Policy Statement*, 1 FCC 2d at 395 n.6). And, although Inland Empire concedes that its managing "general" partner, David Duron, does possess authority to remove the other "general" partners as station employees, (1) Duron cannot unilaterally remove them as *partners* without the good cause conditions set forth above and that (2) Section 7(b) of its partnership agreement is an express manifestation of the partnership's strong desire to retain the other two (Navarro and Racho), whom Duron meticulously selected as "general" partners for their past broadcast experience and other personal qualities. It argues, rather cogently we believe, that if it (or Duron personally) harbored any hidden intention to summarily dispatch Navarro or Racho, it never would have invited them to join Inland Empire in the first place or provided in Section 7(b) of its agreement a compelling incentive for each of them to stay involved for a full five years, lest they sacrifice a portion of their vested equity.

40. We agree with Inland Empire and find nothing in its partnership agreement that undermines the *bona fides* of its proposed ownership structure; nor does it transgress the Commission's requirement that its "limited" partners not be able to influence or control its "general partners", who may be removed only for the aforementioned circumstances constituting good cause. *See Clarification on Ownership Attribution*, *supra*, 1 FCC Rcd at 803 (ability to remove "general" partner for good cause - *viz.*, "malfeasance, criminal conduct or wanton or willful neglect" - does not constitute undue control by "limited" partners). On the other hand, that selfsame *Attribution Clarification* order presents an obstacle which precludes our acceptance of this applicant's claim that several of its "limited" partners be considered mere passive investors. As was the case with Solano (*see supra* para. 23), six of Inland Empire's "limited" partners are members of the law firm that provided the basic legal advice for the partnership in which they here claim to be passive. *See I.D.*, para. 235. But, as we held with respect to Solano and quite recently in *Mark L. Wodlinger*, *supra*, the Commission's *Clarification on Ownership Attribution* order has declared, *ipso jure*, that a lawyer who furnishes personal services and expertise to an applicant in which the lawyer is a principal "is the antithesis of a passive investor."[40] Given what is, for all intents and purposes, a conclusive presumption that attorneys who furnish legal advice and services to applicants in which they themselves are principals are the "antithesis" of passive investors, we must - at a minimum - regard Inland Empire's local attorney, Pierce O'Donnell, an 18.24% equity holder, as an active applicant principal. As the ALJ reports at *I.D.*, para. 235, O'Donnell (along with his law partner, Jeffrey S. Gordon, a 12.16% principal of Inland Empire) has been actively involved in the preparation of this applicant's organizing agreements, and he cannot be considered a fully insulated financial investor who has not communicated with the "general" partners on key matters of substance. While the *I.D.* is unclear as to whether O'Donnell's other four law partner principals in Inland Empire also provided legal advice and service to the applicant, we observe that the combined equity holdings of O'Donnell and Gordon amount to more than 30% of Inland Empire's total equity,

see id., para. 205, and that inasmuch as neither attorney intends to actually "integrate" into station management, it could not garner more than a 70% quantitative factor at best. If, as with Solano, we reduce that factor even further to reflect the equity interests of O'Donnell's four other law partner principals (whose interests he and Gordon presumably represented in working with the applicant's "general" partners), its quantitative "integration" factor would drop off even further. Since the Commission's "integration" analysis puts its highest premium on this quantitative factor, *see Horne Industries, Inc., supra* para. 7, and several of the other competing applicants here are entitled to a 100% quantitative factor, Inland Empire is out of the running (unless, as raised in note 40 of our margin, the Commission further clarifies its *Clarification on Ownership Attribution* in a manner that permits lawyer principals to be regarded as "passive"; the same holds true for Solano).

41. *TV 30*. Like several other applicants here, TV 30 is projected as a California corporation possessing two classes of shareholders: five of its shareholders are represented as holding only nonvoting stock while two others, Rumiko Naito and Howard Teruro, are said to hold respectively 80% and 20% of it's voting stock. *I.D.*, para. 237. Proposing to actually "integrate" only those two "voting" shareholders, TV 30 sought, of course, an extrapolated 100% quantitative "integration" factor. It ran afoul of the ALJ, who determined that inasmuch as four of the five members of TV 30's corporate Board of Directors (holding approximately 80% of its overall equity) were from the ranks of its "nonvoting" stockholders, its two sole "voting" shareholders did not possess full control of the corporation. Reasoning that these four TV 30 directors could not - at the same time - be considered mere "passive" investors, the ALJ held this applicant to be entitled to a 20% "integration" factor "at the very most." *Id.*, at para. 252. Before the Board, TV 30 argues that we should not consider its four directors to be "active" principals, or proportionately diminish its quantitative "integration" factor, because these four "nonvoting" shareholders will not actually (according to TV 30's exceptions) participate in the management of the company. In support of this facially paradoxical proposition, TV 30 brandishes a most imaginative syllogism: it posits (1) that "[t]he Commission [has] recognized the limited role of nonvoting stockholders in its recent *Ownership Attribution* "[41]; (2) and that four out of its five corporate directors are nonvoting stockholders which "precludes [them] the means to influence or control the activities of the issuing corporation"[42]; ergo, (3) its nonvoting shareholders cannot be considered "active" principals, despite their 80% majority on TV 30's Board of Directors.

42. Against the force of such potent syntactic polemics, we shall affirm the ALJ. As we have rehearsed in prior paragraphs, the Commission will generally refrain from attributing ownership interests to media principals who, by dint of their "passive" equity interests, will have "no material involvement" in the management or operation of the entity concerned. *Ownership Attribution*, *supra* note 6, 58 RR 2d at 618. Rather than attempting to explain just exactly how its four subject principals intend to constitute an 80% majority of TV 30's Board of Directors while simultaneously eschewing any "material involvement" in its management, TV 30's exceptions resort to the same keen powers of dialecticism reflected in the prior paragraph. To wit, its exceptions reference numerous cases in which individuals identifed as officers and directors of broadcast applicants were not accorded "integration" credit, notwithstanding their corporate offices. It urges: "The Commission has consistently held that officers and directors, who propose to work in a management capacity, but who own no stock, are not entitled to integration credit."[43] From that unremarkable principle, TV 30's exceptions go on to deduce:

> Thus, if the Commission is correct, as TV-30 submits it is, in holding that the interests of non-voting stockholders, and the interests of officers and directors are each not "cognizable" for integration purposes because each lacks the power to influence the operation and management of a corporation, the fact that a non-voting stockholder is also an officer and/or director cannot operate to raise the non-voting stockholder's interest to a "cognizable" interest. Even with the title of officer or director, a non-voting stockholder remains just that, a non-voting stockholder, with no power to control the company.

43. However, what TV 30 conveniently fails to iterate - but which the cases it cites do make clear - is that "integration" credit is tied directly to *equity ownership*, *see Policy Statement*, 1 FCC 2d at 395-396. Naturally, if a broadcast entity's officers or directors *own* no equity, they receive no *ownership* "integration" credit. But, that plainly is not the case with TV 30's four directors, who actually *own* 80% of its total equity, yet do not envision fulltime roles at the intended station. As a matter of general commercial law, corporate directors "direct or manage the corporation through officers," H.G. HENN & J.R. ALEXANDER, LAWS OF CORPORATIONS §203 (1983), and corporate directors "are required to use their best judgment and independent discretion, and are responsible for the determination and execution of corporate policy" as well as being charged with "supervision and vigilance for the welfare of the whole enterprise." *Id.*, at §207. *Cf. Letter to William S. Paley*, 61 RR 2d 413 (1986) (corporate Board of Directors hold control of corporation, notwithstanding substitution of C.E.O.). The law also applies in California. Cal. Corp. Code §300 (business and affairs of corporation are to be managed under direction of board of directors and all corporate powers exercised by, or under, direction of that board). It would be curious to most full-witted observers were we to hold in the face of these iron-clad legal obligations that TV 30's directors were mere "passive" investors in that same corporation.

44. Somewhat like A&R (*supra* paras. 19-20), TV 30's principals here seek to run with the hares and hunt with the hounds, never choosing one role over an *opposite* role. Whatever the intended purpose of its unfathomable ownership and management structure *on paper*, we find that the four "nonvoting" shareholders who occupy four-fifths of TV 30's directorship seats are, by fundamental operation of law, active equity principals of the TV 30 corporation. Since none of these four principals propose to devote their fulltime efforts to the station itself, the ALJ's award of a net 20% "integration" factor seems more than generous in view of the transcendent supervisory role of four of its (nonvoting shareholder) directors.

45. *All Nations*. The *I.D.* reports that All Nations is a nonprofit corporation governed by a five-person Board of Directors. Because nonprofit corporations have no "equity

owners" in the sense that commercial entities do. our practice has been to calculate ownership "integration" credit for such organizations by constructively equating its governing directors with "owners" under the *Policy Statement*. *See generally Reginald A. Fessenden Educational Fund*, *supra*, 100 FCC 2d at 447, 451; *see also Farragut Television Corp.*, 5 FCC 2d 93, 97-99 (Rev. Bd. 1966). While All Nations had here proposed to "integrate" fulltime four out of five of its directors into station management, the ALJ awarded it only a 40% quantitative factor, *I.D.*, para. 284, after faulting the "integration" proposals of two of its directors. More specifically, the ALJ rejected such credit for All Nations' directors Edward B. Bass and Oscar M. Canales after reviewing their testimony and opining that neither individual would hold true management functions at the station; rather, he considered that the roles they would fill would be advisory, not supervisory. *Id.*, paras. 281-283. Needless to say, All Nations' exceptions take umbrage at the ALJ's refusal to credit the "integration" proposals of Bass and Canales, and it claims, in essence, that the ALJ based his misimpressions on "inconsequential tidbits of testimony," whereas an objective reading of the larger hearing record would demonstrate that both individuals will perform managerial roles at its intended station.

46. The Board has closely reviewed the testimony of all of All Nations' principals and finds that, although much of the testimony of Bass and Canales was inexpert and at times suggested that they viewed their potential roles as essentially consultative rather than managerial,[44] other portions of the testimony of the All Nations' directors is consistent with functions generally considered managerial. Although this is a very close factual issue, where some deference is due to an ALJ's first-hand judgment,[45] we do not believe that the adverse inferences drawn from the testimony presented are supported by a preponderance of the record evidence as a whole. But, as we've acknowledged, it's *still* a close call. Moreover, we ourselves question whether it is proper to accept Bass' fulltime "integration" pledge in view of the fact Bass currently serves as Associate Pastor of a Los Angeles church, a position he does not intend to relinquish, notwithstanding his instant pledge to devote fulltime to the management of this new San Bernadino UHF television station. It is well-established that where fulltime "integration" is proposed, those having other substantial vocational commitments must make a persuasive showing as to how both occupations can be fulfilled at once.

> It is both a long-held and routinely-applied principle of our comparative broadcast law that persons seeking comparative credit for ownership integration must demonstrate on the record how they can accommodate their outside professional and business activities so as to fulfill their specific commitments to the proposed station. *Margaret Garza*, 1 FCC Rcd 1294 (Rev. Bd. 1986); *Central Texas Broadcasting Co., Ltd*, 90 FCC 2d 583, 596 (Rev. Bd. 1982), *rev. denied*, FCC 83-415 (Comm'n 1983), *aff'd mem. sub nom. Blake - Potash Corp. v. FCC*, No. 83-2112 (D.C. Cir. April 26, 1985); *Blancett Broadcasting Co.*, 17 FCC 2d 227 (Rev. Bd. 1969).

Leininger - Geddes Partnership, 2 FCC Rcd 3199 (Rev. Bd. 1987), *review denied*, 3 FCC Rcd 1181 (1988). And, where a vocational conflict is apparent on its face, a loose promise to "diminish" the time devoted to a current occupation is too indefinite a vow to accept as satisfactory. *See id.*, 2 FCC Rcd at 3199 (practicing attorney's *ipse dixit* offer to devote to station "whatever time it takes" to qualify for fulltime "integration" credit found unacceptable). In this case, Bass' promise strikes us as equally vague. *See I. D.*, para. 270. However, the record on this matter is brief and inconclusive, and no opposing party has lodged exceptions directly on this point, thereby waiving any such objections to the ALJ's findings with respect to Bass' pastoral position (*see* 47 CFR §1.277(a)).[46]

47. As explained in the immediately previous footnote, All Nations' proposed 80% fulltime "integration" level places it comparatively below those with a 100% factor according to the Commission's *Horne Industries* formulation (*see supra* para. 7). Its hopes of prevailing lie, no doubt, in gaining a dispositive preference for its particular program format,[47] a matter we discuss *infra* at paras. 57-60 (along with a similar complaint by TV 30), after we conclude our review of the exceptions directed to "integration" matters. For present purposes, however, we concede All Nations an 80% quantitative "integration" factor, despite our own misgivings about the fulltime pledge of Edward Bass.

48. *RBN*. Like All Nations, above, RBN is reported to be a nonprofit corporation governed by a five person Board of Directors. Unlike All Nations, RBN sought a 100% fulltime "integration" credit for proposing that all five of its directors manage the intended station. But, the ALJ awarded RBN only an 80% factor after finding that one of its directors, Lorita F. Stewart, will have no supervisory duties in her proposed capacity as the station's Director of Public and Community Affairs. I.D., para. 312.

49. Whereas the ALJ placed great weight on Stewart's testimony "that she will not supervise any other person at the station" *(id.,* citing Tr. 455), there is a much more basic reason why Stewart is not entitled to management "integration" credit. The seminal *Policy Statement* under which we adjudicate clearly states that such credit is to be considered only where an "integrated" owner (or, as in this case, a director of a nonprofit entity) will be "exercising policy functions." 1 FCC 2d at 395 (emphasis added). Although represented by RBN as the station's intended Director of Public and Community Affairs, I.D. para. 302, Stewart at hearing testified as follows:

> Q. Ms. Stewart, could you explain to me what types of station policies you will determine as director of public and community affairs?
>
> A. I will determine no station policies, only -- I have a vote on the board of directors, come to a meeting and then and there I will get my vote.
>
> Q. But as director of public and community affairs, in that employee position you will not be setting any station policies?
>
> A. No, none at all.

Tr. 457. After reviewing the entirety of Stewart's testimony, we find that the ALJ's refusal to regard Stewart's function - at least as *Stewart* anticipates her function - as managerial or contemplative of significant policy-making authority or responsibility was clearly correct. No

"integration" credit can be awarded to RBN for her presence, and it shall receive no more than an 80% fulltime award.

50. *Summary of Quantitative Integration Credit.* Based upon the foregoing review of the exceptions of all twelve remaining applicants, we have found that Sandino and SSP are entitled to a 100% quantitative fulltime integration factor, and Channel 30 a problematical 100% (*see infra* para. 54), after which come All Nations and RBN (with 80% at best), Inland Empire (with approximately 70% at best), and Buenavision (at 51% even if, *arguendo*, it is not dispatched as a complete sham). While we have declined to award Solano a specific quantitative "integration" factor, because its two "limited" partnership groups prominently include attorneys who have actively advised and serviced their applicant, and because its putative "general" partners seem to know very little of their application, Solano could not receive a grant here in any event without a remand for an evidentiary hearing to determine the basis on which its "general" partners certified their financial qualifications to the Commission (*see supra* para. 25). TV 30 receives, at most, a 20% factor. A&R has received no "integration" credit, because neither we nor its principals can determine their true ownership status, *viz.*, active or passive. And, finally, we affirm the ALJ's outright rejection of the "integration" proposals of SSB and Good News: these latter two are prototypical shams, in which an offstage conductor wields the baton, while stand-in performers fiddle with their borrowed instruments, forget the score (if they've ever perused it), and reduce the proceedings to burlesque.

51. Since, holds the Commission, "it is well established that qualitative attributes . . . may enhance the value of an integration proposal but cannot overcome clear quantitative differences," *Horne Industries*, *supra*, 98 FCC 2d at 604 n.12, we will turn our review to the qualitative attributes of those three applicants here held to be entitled to a 100% fulltime quantitative "integration" factor, Channel 30 (tentatively), Sandino, and SSP, none of whom are encumbered by any "diversification" (or signal coverage) demerit.

Comparison of Qualitative Attributes of Channel 30, Sandino, and SSP

52. *General Considerations.* Once competing parties are ranked on the "diversification" and quantitative "integration" criteria, and assuming no significant signal coverage differences, *see, e.g., Washoe Shoshone Broadcasting*, *supra*, our comparative analysis focuses upon the other attributes set out in the *Policy Statement*, and in even newer policy edicts, to determine whether any decisional distinctions exist as between the ranking applicants. Three qualitative *Policy Statement* attributes to be considered are (1) local residence in the community or proposed service area, with past local residence taking considerable precedence over recent or proposed future residence, 1 FCC 2d at 395-396 ; (2) civic activities in the community of license and, to a lesser degree, in the larger service area, *id.* ; and (3) broadcast experience. *Id.* More recently, the Commission also considers the racial and sexual make-up of an applicant, *see generally Cannon's Point Broadcasting*, *supra*. In that latter regard, the Commission has held that the comparative preference for a 100% fulltime "integrated" minority applicant is of approximately the same weight as that for local residence, *Radio Jonesboro*, 100 FCC 2d 941, 945 (1985), but that "minority ownership and participation has more significance as an enhancement factor than female ownership and participation." *Horne Industries*, 98 FCC 2d at 603. With that Commission value structure as our guide, we compare those applicants who are, in the Board's intermediate appellate view, entitled to the all-important 100% quantitative "integration" factor.

53. *Channel 30.* All four of Channel 30's proposed "integrated" principals are entitled to some local residence credit: Suzanne Schott, holding a 14.3% "voting" interest, is a long-time resident of the proposed station's service area, *I. D.*, para. 14, and its three other principals (each holding a 28.6% voting interest) are also long-time residents of the proposed service area. *Id.*, paras. 9, 19, 23. Further, all four were credited by the ALJ with civic activities in the service area, *see id.* at paras. 10, 15, 20, 24. One of its principals, Betty Johnson (a 10.9% equity holder) has some minor broadcast experience, *id.*, para. 25. All of its "voting" principals are female, *id.*, para. 7, and one, Lucy Lopez (a 10.9% equity holder) is Hispanic. *Id.*, para. 21.

54. Despite the fact that Channel 30 proposes to "integrate" all four of its "voting" shareholders, there remains a serious question as to whether it is entitled to a 100% *effective* "integration" factor. As indicated in paragraph 11, *supra*, one of Channel 30's four voting shareholder's, Suzanne Schott, owns less than 1% of its total equity. And, as discussed briefly at paragraph 37 & n.37 with respect to another applicant (Good News), the Commission has for many years held that even "nonpassive" ownership interests of less than 1% are simply too insignificant to be legally cognizable as a media interest. Indeed, the Commission has recently raised that threshold cognizability level from 1% to 5%, *Ownership Attribution*, *see supra* nn. 6, 37, finding that ownership interests of less than 5% are so insubstantial that no individual (or entity) holding less than 5% level of a company's "nonpassive" equity could likely effect the management of a broadcast licensee. In fact, as we read the Commission's *Ownership Attribution* orders, ownership holdings of less than 5% need not even be reported to the Commission, the agency considering such holdings to be, in essence, *de minimis*. The question for us, then, is: can an individual receive ownership/management "integration" credit while holding less than a legally cognizable level of ownership equity? Or, more specifically in the case at bar, should Schott receive full ownership "integration" credit, thus raising Channel 30's quantitative "integration" factor from 87.5% to a possibly dispositive 100%, when Schott herself owns but a mere 0.840% equity interest in her company? While we understand that Schott is depicted as holding 14.3% of the "voting" stock in Channel 30, it is not clear from the Commission's *Ownership Attribution* orders that this claim is determinative. From the Commission's orders themselves, it would appear that cognizability turns on the level of "nonpassive" equity, *simpliciter*, and not upon any free-floating voting arrangements. Accordingly, it is not clear that Channel 30 should receive an extrapolated 14.3% ownership/management "integration" credit for Schott's 0.840% equity interest. We discuss the consequences of this enigma in our conclusions, *infra* para. 61.

55. *Sandino.* Jose Oti, Sandino's sole voting principal, has no significant past local residence, *see id.*, para. 38, nor (it follows) local civic activities to his credit, though his promise to move to San Bernardino should he be awarded the station is entitled to some relatively slight

recognition under the *Policy Statement*. He has some broadcast experience, *id.*, para. 39, and is Hispanic. *Id.*, para. 40. Although Oti's racial preference outranks Channel 30's sexual preference. *Horne Industries*, and his broadcast experience is superior to Channel 30, it appears to us that Channel 30's past local residence and service area civic activities overbalance Oti's credentials by some palpable margin. Unless Channel 30's quantitative "integration" factor is reduced for the reasons discussed, Sandino would rank below Channel 30, all relevant comparative factors duly considered.

56. *SSP*. Having restored SSP to a 100% quantitative "integration" factor, our attention is upon Sandra Phillips, its sole "general" partner, the attributes of "limited" partners playing no part whatever in our comparative functions. Phillips has no past local residence (or, of course, local civic activities) on which to rely, *I.D.*, para. 171, and no past broadcast experience. *Id.*, para. 172. Like Oti, above, she promises, if selected, to move to San Bernardino. All told, however, given that the Commission officially prefers racial minorities to females as broadcast licensees, *Horne Industries*, SSP must be considered inferior to Sandino as an applicant.

PROGRAMMING ISSUES

57. TV-30 excepts to the ALJ's *Memorandum Opinion and Order*, FCC 84M-1466, released March 23, 1984, which denied TV-30's request for a "specialized programming" issue. TV-30 here asserts that, in its petition to enlarge issues, filed October 21, 1983, it made a substantial showing of a need for Asian-language programming in its proposed service area. Therein, TV-30 reflected the size of the Asian population within its contour (approximately 5% of the gross population), and it submitted a specialized programming proposal purporting to meet the needs of the Asian population. Nevertheless, based on TV-30's own admission that there is currently 50 hours a week of Asian programming available in the San Bernardino area, the ALJ concluded that no programming issue was justified.

58. In *George E. Cameron Jr. Communications*, 71 FCC 2d 460, 464-466 (1979)(subsequent history omitted), the Commission held that inquiry into the relative need for specialized programming under the standard comparative issue would be permitted only upon a threshold showing that the proposed format is not available in the particular market in a "substantial amount". *See also Comparative Broadcast Hearing Procedures*, 75 FCC 2d 721 (1980); *Wilshire District Broadcasting Co., Inc.*, 101 FCC 2d 908 (Rev. Bd. 1985). On its face, 50 hours of weekly programming directed at a 5% minority audience does appear "substantial" by Commission tenets. Thus, in *Flint Family Radio, Inc.*, 69 FCC 2d 38, 45 (Rev. Bd. 1977), a case cited with approval by the Commission in *Cameron* at n.6, as illustrative of the availability in the service area of a reasonable amount of the specialized religious format proposed by one applicant, other area stations were then broadcasting approximately 40 hours of such programming, and the Board declined to award a preference. More recently, in *Scott & Davis Enterprises, Inc.*, 88 FCC 2d 1090, 1098 (Rev. Bd. 1982), the Board concluded that 21 hours of a certain variety of specialized programming in the service area was ample to meet the Commission's "substantial amount" test and to defeat the request to add a specialized format issue. The Commission did not disturb this holding. *See Order*, FCC 83I-129, released November 9, 1983. Clearly, in light of this case precedent, TV-30's exception must fail.[48]

59. All Nations likewise excepts to the ALJ's *Memorandum Opinion and Order*, FCC 84M-1473, released March 23, 1984, wherein he also refused to add a comparative programming issue as requested in All Nations' petition to enlarge issues filed October 21, 1983. All Nations here asserts that it conducted ascertainment surveys of community leaders and the general public, and conducted a special survey of the Hispanic community, which constitutes 25% of the San Bernardino area population. Based on its ascertainment of the community's needs, All Nations submits it proposed specific programs to deal with the major needs in the area. Among other things, All Nations proposed to broadcast 32.1% of its programs in Spanish to address the problems ascertained in the Hispanic community. Moreover, citing *United Broadcasting Co.*, 59 FCC 2d 1412 (Rev. Bd. 1976), All Nations sought similar recognition of its proposed "short message format", and it here contends[49]:

> In *United Broadcasting Co.*, 59 FCC2d 1412, 37 RR2d 1169 (Rev.Bd. 1976), the Review Board added a comparative programming issue based on the form of the proposed programming. One important factor considered in the decision was the short message format proposed by the applicant. All Nations proposed to utilize the short message format to disseminate information in both English and Spanish regarding employment opportunities, crime prevention, youth, and senior citizen activities, services available to alcohol and drug abusers, and environmental and weather alerts. Proposal at 27-38.

60. We agree with the ALJ, albeit for somewhat different reasons, that a comparative programming issue is not warranted. Unlike TV-30, which sought a "specialized" programming issue, All Nations is here seeking what is commonly known as a "comparative" programming issue. The Commission's comparative programming issue has its genesis in the *Policy Statement*, 1 FCC 2d at 397, where the Commission, eschewing minor differences among applicants' proposed program plans, stated that it will accord decisional significance "only to material and substantial differences" and that such differences "will be considered to the extent that they go beyond ordinary differences in judgment and show a superior devotion to public service." In *Chapman Radio & Television Co.*, 7 FCC 2d 213, 214-215 (1967), the Commission required petitioners seeking comparative programming issues to make a *prima facie* showing of significant differences in proposed programming and to relate their claimed substantial superiority to ascertained needs. The *Chapman* standard is still good law. *See Jarad Broadcasting Co., Inc.*, 1 FCC Rcd 181, 189 (Rev. Bd. 1986); *Chase Communications Co.*, 100 FCC 2d 689, 691 n.6 (Rev. Bd. 1985). The persuasive threshold showing required by *Chapman* has not been met in this case. Although All Nations addressed one prong of the *Chapman* test by tying its program proposal to its ascertainment surveys,[50] it has not satisfied the second, more crucial prong of demonstrating that its program proposal is substantially and materially different from those of the other applicants and represents a superior devotion to public service. In other words, despite its conclusory claims of superiority, All

Nations did not make a specific comparison between its programming proposal and those of the other applicants. Furthermore, while it claimed its programming was fashioned to meet the needs of the Hispanic community, other applicants also proposed significant Spanish programming. *See* Reply Exceptions of Channel 30 at 22; Reply of SBB at 4-5. In addition, the claimed superiority of All Nations' other programming categories is also open to questions. *See id.* (comparing All Nations' proposed news programming with that of TV-30's, and All Nations' proposed "all other" nonentertainment programming with that of Good News). Finally, insofar as All Nations' reliance on *United Broadcasting* emphasizes its "short message" format, the programming issue there turned on that petitioner's *prima facie* showing of significant differences in the *scheduling* of public affairs programming by the respective applicants. That is, petitioner was able to show that it would present the primary portion of its public affairs programming during hours when the listening audience would best be able to hear it, and that it would publicize said programming throughout the day, whereas, by contrast, half of the public affairs programs of its competitor would be presented between 3:00-4:00 a.m., and four of the latter's other public affairs programs would consist of brief two-minute vignettes. *See* 59 FCC 2d at 1422-1423. No comparable showing of significant scheduling differences between the applicants has been made by All Nations here. In sum, All Nations has not satisfied the Commission's intentionally stringent requirements for a comparative programming issue, and its exception is denied.

CONCLUSIONS

61. With none of the twelve competing applicants bearing the onus of a "diversification" demerit or, conversely, enjoying a dispositive signal coverage advantage, the *Policy Statement*, as amplified by subsequent Commission case precedent, enjoins our attention to ownership/management "integration", with a decisional emphasis first upon any "clear quantitative difference" as between the various applicants. Of all of the instant applicants, we have found that only Sandino and SSP are entitled to an unqualified 100% factor in that regard, which then brings us to the ALJ's recommended selection of Channel 30. Because of its wider array of qualitative "integration" enhancements (including, at varying levels, local residence and civic activities, minority and female ownership, broadcast experience (albeit slight)), Channel 30 would be a clear winner, if regarded as entitled to a 100% quantitative "integration" factor. However, as discussed at para. 54, *supra*, the question of whether to award any "integration" credit for Channel 30's Suzanne Schott, whose equity interest in the corporation is an infinitesimal 0.840%, and far below the Commission's current 5% threshold cognizability level for media interests, is not a matter of settled law. Though the Board itself would be strongly disinclined to award any ownership "integration" credit to a principal whose equity holding is deemed so insignificant by the Commission as to be neither cognizable nor even reportable as a media ownership interest *per se*, at least as we construe those *Ownership Attribution* orders, the Commission itself has not directly spoken to this unusual question. Hence, despite our own rhetorical questions, we will - if perhaps only tentatively - credit Channel 30 with Suzanne Schott's "integration" portion. Just as in *Independent Masters Ltd.*, *supra*, where thorny questions arose concerning the application of the Commission's newer *Ownership Attribution* policies to unforeseen situations arising in the comparative licensing context, we will heed the venerable maxim of cautious judicature, " *in dubio, pars mitior est sequenda.* " *See* 104 FCC 2d at 193. With a 100% quantitative "integration" factor, Channel 30's broader qualitative attributes, as we have said, sustain its present hold on first place. Were Channel 30's quantitative "integration" factor to drop off to the 85.7% level set by the ALJ, *I.D.*, para. 317, the contest between it and Sandino would be exceptionally close, perhaps too close to discern any meaningful distinction between the two.[51] In so stating, the Board recognizes that in *New Continental Broadcasting Co.*, 88 FCC 2d 830, 850 (Rev. Bd. 1981),[52] the Board opined that one applicant's 12.5% quantitative advantage in fulltime "integration" credit constituted the "clear quantitative difference" requisite to a decisional distinction. However, upon review of a subsequent case, the Commission "decline[d] to extend *New Continental* " to a Board decision in which it speculated that a 10.8% advantage was "probably" a clear quantitative difference. *Metro Broadcasting, Inc.*, 2 FCC Rcd 1474, 1475 & n. 9 (1987). Thus, were we to reduce Channel 30 to an 85.7% quantitative factor and apply strictly the *New Continental* calibration, Sandino - with a 100% factor - would summarily prevail.[53] Inasmuch as the eleven competing applicants here rebuffed are entitled to file applications for full Commission review of our decision, 47 U.S.C. §155(c)(4), it is virtually certain that our treatment of Channel 30's "integration" element will be the subject of much appellate comment, and we are confident that the Commission will take any such occasion to specifically address the "nice" question which may ultimately divide Channel 30 from the permanent possession of the television Construction Permit we hereinbelow award to it.

62. ACCORDINGLY, IT IS ORDERED, That the petitions for leave to amend filed November 2, 1987, January 6 and April 29, 1988, by Solano Broadcasting Limited ARE GRANTED, and the amendments ARE ACCEPTED; that the petitions for leave to amend filed December 23, 1987 and June 8, 1988, and the motion for leave to amend filed February 5, 1988 by Sandino Telecasters ARE GRANTED, and the amendments ARE ACCEPTED; that the petition for leave to amend filed February 12, 1988 by Channel 30, Inc. IS GRANTED, and the amendment IS ACCEPTED; that the motion to strike filed December 17, 1987 by Solano Broadcasting Limited IS DENIED; and that the petition for leave to file, filed April 21, 1988 by Good News Broadcasting Network, IS GRANTED; and

63. IT IS FURTHER ORDERED, That the Application of Channel 30, Inc. (File No. BPCT-830506LS) for authority to construct a new television station on Channel 30 at San Bernardino, California IS GRANTED; and that the applications of Religious Broadcasting Network (File No. BPCT-830505KV), Solano Broadcasting Limited (File No. BPCT-830506KK), A&R Broadcasting Company, A Limited Partnership (File No. BPCT-830506KM), Buenavision Broadcasters (File No. BPCT-830506KN), SSP Broadcasting, A Limited Partnership (File No. BPCT-830506KO), Good News Broadcasting Network (File No. BPCT-830506KR), Sandino Telecasters (File No. BPCT-830506KT), Inland Empire Television (File No. BPCT-830506KU), Television 30, Inc. (File No. BPCT-830506KV), San Bernardino Broadcasting, Limited Part-

nership (File No. BPCT-830506KX), All Nations Christian Broadcsting, Inc. (File No. BPCT-830506LA) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] *See Order*, FCC 83M-4753, released December 19, 1983; *Order*, FCC 83M-4754, released December 19, 1983; *Order*, FCC 83M-4755, released December 19, 1983; *Order*, FCC 84M-1962, released April 25, 1984; *Order*, FCC 84M-2252, released May 11, 1984; *Order*, FCC 84M-2405, released May 22, 1984; *Order*, FCC 84M-2535, released June 1, 1984; *Order*, FCC 84M-3484, released August 10, 1984; *Order*, FCC 84M-4235, released October 2, 1984.

[2] The *Policy Statement's* tilt toward those applicants with no other mass media holdings is evidenced not only by its heavy emphasis on the basic "diversification" criterion, but under the "integration" criterion as well. Thus, the *Policy Statement* declares that it favors the "integration" of ownership into active station management not only on its own merits, but because placing a comparative premium on fulltime management participation by licensee principals in one case "frequently complements the objective of diversification, since concentrations of control are necessarily achieved at the expense of integrated ownership." 1 FCC 2d at 395.

[3] *See Santee Cooper Broadcasting Co.*, 99 FCC 2d 781, 794 (Rev. Bd. 1984), *aff' d in principal part sub nom. Women's Broadcasting Coalition, Inc.*, 59 RR 2d 730 (1986)(Comm'n), *aff' d per judgment sub nom. Plantation Broadcasting Corp. v. FCC*, 812 F.2d 1443 (D.C. Cir. 1987). There the Board relieved one of the applicants of a comparative "diversification" demerit for ownership of a nearby cable television system, because that applicant held such interests for less than one month in the midst of the comparative hearing.

[4] However, as we suggested some time ago in *Santee Cooper Broadcasting Co.*, *supra* note 3, the existing FCC policy of according very little relative weight to cable television system co-ownership relative to co-ownership of other mass media outlets is becoming increasingly untenable, both factually and legally. In *Santee Cooper*, we observed:

> As we have repeated from *Greater Wichita*, *supra*, CATV systems are of lesser concern than broadcast stations from the standpoint of media "voices." Yet, with the growth of such phenomena as the Cable News Network, for example, cable is clearly moving away from its origins as a passive carrier of distant TV signals and becoming more of a media "voice" in its own right. *See e. g., Children's Television Programming*, 55 RR 2d 199, 208 (1984); *Fairness Doctrine Inquiry*, 49 Fed. Reg. 20317, published May 14, 1984, at paras. 26-44.

99 FCC 2d at 794 n.54. Other factual, legal, and policy developments since *Santee Cooper* reinforce our view that, for example, counting one competing applicant's ownership of one (or more) distant television (or even radio) broadcast station(s) more heavily against it than a competing applicant's co-owned cable television system(s) under the rubric of media "diversification" is patently anachronistic. For instance, in considering television station transmitter relocations, the Commission has recently indicated, albeit indirectly, that it now regards a local cable television system as virtually a fully acceptable substitute for an existing local television station. *See KTVO, Inc.*, 57 RR 2d 648, 650 (1984)(Comm'n) ("In recent years it has become apparent that for some purposes the public interest is best served by treating [TV, CATV, Translators] as a single video marketplace.") More recently, the court discoursed upon the Commission's updated view of cable television's status as a very significant mass medium in its own right.

> Abandoning its initial view of cable as an auxiliary service that merely supplemented broadcasting by improving reception in outlying areas, the Commission now recognized cable as a legitimate, independent vehicle for providing alternative video services to the public.

Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434, 1442 (D.C. Cir. 1985), *cert. denied sub nom. Nat' l Ass' n of B / casters v. Quincy Cable TV, Inc.*, 106 S. Ct. 2889 (1986). Under these changed circumstances, where cable television is now regarded by official observers as an *independent* mass medium of expression, so much so as to be entitled to rather exacting First Amendment protections (*Quincy*), and a mature video media service that may now be permitted to wholly supplant an existing local television signal (*KTVO*), the Board firmly believes that *Greater Wichita Telecasting, supra*, must be revisited and reconciled with the agency's radically altered perception of the status of cable television in the contemporary mass media universe. Cable television should play no less a role in the Commission's "diversification" considerations than any other mass medium.

[5] The deadline after which an applicant cannot make a cognizable media divestiture pledge is the so-called "B" cut-off date. "The 'B' cut-off date is the last date for filing minor amendments by all mutually exclusive applications subsequently filed as of the 'A' cut-off date." *Clay Television, Inc.*, FCC 88-95, released March 16, 1988, at para. 2, 3 FCC Rcd 1590. For an illustration of this avoidance mechanism applied in practice, *see WHW Enterprises, Inc.*, 89 FCC 2d 799, 813-814 (Rev. Bd. 1982)(subsequent history omitted).

[6] In not attributing - for routine comparative purposes - the extant media holdings of an applicant's "nonvoting" shareholders or, as the case may be, an applicant's "limited" partners, the Board generally tracks the Commission's rules and policies regarding such "passive" ownership interests as set forth in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *reconsidered*, 58 RR 2d 604 (1985), *further clarified*, 1 FCC Rcd 802 (1986). *See Daytona Broadcasting Co., Inc.*, FCC 86-182, released April 18, 1986, at para. 7 (*Attribution of Ownership* policies applicable in comparative "diversification" calculations).

[7] Several other directors of RBN are also affiliated with Cathedral of Faith and are engaged in the production and sale of its programming to San Jose area cable television systems. *I. D.*, para. 314. However, their roles in this regard are not so significant that any measurable "diversification" onus would attach to RBN. Conversely, the role of Reverend Foreman, in both the Cathedral of Faith programming and in the proposed San Bernardino station, is dominant and does present certain "diversification" questions.

[8] In *Morris, Pierce & Pierce*, the Board declined to assess a "diversification" demerit to an applicant, one of whose principals (and 25% equity holder) owned a majority interest in a radio production company. 88 FCC 2d at 723. No evidence appeared in that case to suggest that the goal of media diversity in the Fort

Myers Beach, Florida area would be impacted because of that particular production company interest. *See also Pittsfield Community Television Ass'n*, 94 FCC 2d 1320, 1321-1322 (Rev. Bd. 1983)(no "diversification" demerit assessed based upon advertising agency interest or individual's mere employment with a large national network in program production capacity).

[9] Exceptions have been taken to the ALJ's acceptance of RBN's March 11, 1987 amendment, to the extent that Reverend Foreman's pledge therein to resign his Cathedral of Faith offices came more than 30 days after Cathedral of Faith (on February 2, 1987) agreed to purchase outright Channel 65.

[10] For example, in a recent case the Court of Appeals dismissed an appeal of a Commission decision because the appellant failed by one day to meet a pleading deadline. *Punta Ybel Communications, Ltd. v. FCC*, No. 86-1670 (D.C. Cir. February 29, 1988). *See also Channel One Systems, Inc. v. FCC*, No. 88- 1100 (D.C. Cir., June 14, 1988). However, the deadline missed in *Punta Ybel* was a *statutory* deadline (47 U.S.C. §402(c)), and the comparative "divestiture" deadline at issue in the case at hand is purely internal.

[11] RBN Exceptions at 5.

[12] Indeed, the ALJ determined that the Channel 65 programming contract was not a cognizable media interest. While we disagree with that judgment, we have in the text recognized the possible ambiguity surrounding such program production activities in the context of the Commission's "diversification" considerations.

[13] Nor may we exact a comparative penalty from RBN under Section 1.65, since there is no suggestion here of an intent to conceal decisional facts from the Commission or a pattern of carelessness or inattentiveness to the Commission's reporting requirements. *See Merrimack Valley Broadcasting, Inc.*, 55 RR 2d 23, 24-25 (1983), *modified on reconsideration*, FCC 84-496, released October 23, 1984.

[14] Buenavision Exceptions at 28-32.

[15] Remarks by Dennis R. Patrick, Chairman of the Federal Communications Commission, before the National Association of Broadcasters, April 12, 1988, Las Vegas, Nevada. In that same speech, Chairman Patrick vowed to "move aggressively against those who set up 'sham' ownership structures to take advantage of various comparative preferences."

[16] For further insights into this unfortunate phenonemon, *see, e.g., Newton Television, Ltd.*, 3 FCC Rcd 553, 558-559 n.2 (Rev. Bd. 1988). *See also* Tillotson, *FCC's Comparative Process Is A Sham and A Shamble*, BROADCASTING, Oct. 5, 1987, at 22; Barnes, *Investors Use Blacks As Fronts To Obtain Broadcasting Licenses*, Wall St. J., Dec. 11, 1987, at 1, col. 1. As we noted in *Newton Television*, the foremost victims of these sham applicants are *bona fide* minority (and female) applicants who must compete against these well-heeled poseurs in very expensive comparative licensing proceedings for the relatively few broadcast frequencies remaining unoccupied.

[17] The evidence (Tr. 2175) reveals that Ms. Schott's husband had transferred the Channel 30 stock to her because his ill health would have prevented his active participation in corporate affairs and, later, at the proposed station. It is now reported that Mr. Schott has since passed away. Channel 30 Exceptions at 10 n.5.

[18] Sandino asserts that although Frankie Crocker had fully joined in the May 14, 1984 "Joint Petition" signalling the merger and the simultaneous withdrawal of Crocker's own application, Crocker later refused to sign the new limited partnership agreement, despite the proddings of Oti, Riklis and Sandino counsel. *See* Sandino Exceptions at 7-11. Sandino's exceptions contend, without challenge by the other parties, that Crocker obstinately refused to sign the partnership agreement because of a disagreement between him and Riklis over past legal expenses; and, thereafter, Crocker spurned all of Sandino's attempts to communicate with him. Finally, claims Sandino, Oti and Riklis "had no choice but to exclude [Crocker] from Sandino." *Id.*, at 10. Consequently, Oti and Riklis sought to amend the Sandino application to specify Oti as the sole "general" partner (and 30% equity owner) and Riklis as the sole "limited" partner (owning the remaining 70% of the equity).

[19] Actually, in *Anax*, the applicant had represented that 71% of its equity was held by "additional limited partners." 87 FCC 2d at 484.

[20] *See Attribution of Ownership Interests (supra* note 6), 1 FCC Rcd at 804.

[21] Because we affirm the ALJ's conclusion that SBB's application is essentially a sham, we need not determine whether a principal holding a mere 10% equity interest in an applicant can - without additional evidentiary factors - claim to exercise exclusive control over that applicant's activities. This matter is discussed at greater length in *Independent Masters, Ltd.*, 104 FCC 2d 178, 190-193 (Rev. Bd. 1986), a case recently settled without Commission resolution of the issue. *See* FCC 88I-046, released May 25, 1988.

[22] A&R Exceptions at 6 (quoting *Greater Wichita Telecasting, Inc.*, 96 FCC 2d 984, 989 (1984)).

[23] Additionally, inasmuch as we have affirmed the ALJ's conclusion that Charles E. Walker's role is active rather than passive, A&R - with only a 73% quantitative integration factor - is effectively out of contention with those applicants who propose to "integrate" all of their owners. *See infra*, para. 51.

[24] Solano Exceptions at vi.

[25] *Id.*, at 3.

[26] In fact, a number of Solano's "limited" partners also hold a variety of other media interests, see I.D. paras. 86-92, but it appears that all of Solano's principals have made a timely pledge to divest those other media interests should Solano prevail in this proceeding. The ALJ, therefore, assessed Solano no "diversification" demerit; nor shall we.

[27] The Board recognizes, with appropriate empathy, *see e.g., Independent Masters, supra* note 21, 104 FCC 2d at 189 n. 25; *Chester Associates*, 2 FCC Rcd 2029, 2031 n.9 (Rev. Bd. 1987), that many of the activities of attorneys Parker and Rosenbloom on behalf of Solano and the respective principals of C30-I and C30-II occurred prior to the Commission's 1986 Ownership Attribution clarification, wherein the Commission first discussed with specifity the role of equity-holding attorneys. However, we held in Wodlinger that the Commission's clarification language, and the underlying reasoning, precluded the Board from any different result with respect to entities formed prior to that clarification. We also note that, in the instant case, Rosenbloom at least has continued his advisory and representational activities to this very day, *see, e.g.*, Tr. of Oral Arg. of April 1, 1988 at 4011-4031, despite the potential implications of the Commission's 1986 Ownership Attribution clarification order. As Rosenbloom himself stated at oral argument:

> MR. ROSENBLOOM: There are two lawyers involved in the Solano matter. One is Mr. Parker in Texas and one is myself.
>
> I am before you. I have participated in the prosecution of this case from the moment the case was filed. I've advised on legal matters before the Commission; and I am not a potted plant.

Id., at 4013. A blooming rose, perhaps, but definitely neither green in FCC matters, nor potted in any respect.

[28] A good example of such certification foolishness is to be found in the aforecited *Washoe Shoshone Broadcasting*, FCC 88R-30 at paras. 44-52.

[29] Buenavision Exceptions at 7-21.

[30] Revision of Form 301, 50 RR 2d 381 (1981).

[31] The Board notes that in *Victory Media, supra*, the Commission reversed the Board's refusal to recognize a purported corporate applicant which did not file its state certificate of incorporation until the "B" cut-off date, had issued no stock, had no by-laws, and whose certificate of incorporation specified only one class of stock (voting), whereas the applicant predicated its quest for an effective 100% quantitative "integration" factor on its parolclaim that it had two classes of stock (voting and nonvoting). See 3 FCC Rcd at 2074-2075. In that case, the Commission stated that the applicant's "informality" was not significant. Id. However, the Board does not read *Victory Media* so broadly as to suggest that the Commission is satisfied for its required regulatory purposes to rely upon "oral" corporations, "oral" partnerships, or an applicant's claim that it will adopt its actual legal form and substance at some unspecified time in the future. That, of course, would be absolutely absurd, and we must believe that *Victory Media* turned on the particular facts of that case.

[32] SSP Exceptions at 6-7. Indeed, it was not until the Commission issued its 1984 Ownership Attribution, supra note 6, that the Commission expressly announced that it would rely upon, for its own purposes, the Uniform Limited Partnership Act to ensure that "limited" partners were adequately insulated from control of a broadcast entity. *See* 97 FCC 2d at 1022-1023. Shortly thereafter, and upon reconsideration (in 1985), the Commission abandoned its intended reliance on the ULPA, and indicated that it would demand far more stringent contractual provisions in limited partnership agreements. Ownership Attribution, supra note 6, 58 RR 2d 615-620. The SSP limited partnership agreement does not contain the express contractual provisions set forth in the Commission's 1985 reconsideration order (and, more specifically, paras. 48-50 thereof).

[33] SSP Exceptions at 14.

[34] *See, e.g.,* Good News' Exceptions at 6.

[35] *Id.*, at 6-7.

[36] *Id.* As discussed supr a, para. 31, the Board recognizes that the Commission has of late deemphasized financial dominance as a key test of defacto control. However, neither the Commission nor the Board completely ignore the financial relationships between an applicant's principals, *see, e.g., KIST Corp.* and *Pacific Television,* especially where collateral evidence suggests that a particular principal is more than a "passive" financier. Financial dominance remains one link in the chain of evidence that can lead to a determination that an applicant's so-called "active" principals are actually subordinate.

[37] In its *Ownership Attribution* report, the Commission held that its prior 1% attribution benchmark was too low, and it declared that - in general - any ownership interest below 5% for "Non Passive Investors" is simply too insignificant to effect control of a broadcast entity, even in "closely-held" companies. *See* 97 FCC 2d at 999-1012. Indeed, individual equity interests of less than 5% need not even be reported to the Commission as a palpable broadcast ownership interest. Id., at 1028. Here, Good News' three "non-passive investors" each own less than 5% of their entity's total equity.

[38] By inadvertence, the I.D. denominates two of its paragraphs as number 235. We will refer to the second of these as "235(a)."

[39] Inland Empire Exceptions at 19-20 (citing Section 12(a) of its partnership agreement).

[40] Citing *Louisiana Super Communications Ltd. Partnership*, 102 FCC 2d 1293, 1297-1300 (Rev. Bd. 1985), the ALJ did not regard the legal activities and services of Inland Empire's "limited" partners as negating their claims of passivity. I.D., para. 235. However, *Louisiana Super* was decided nearly one year prior to the Commission's issuance of its *Clarification on Ownership Attribution*, and is, of course, superceded thereby. The Board concedes, moreover, that it may have improvidently failed to expressly apply the Commission's conclusive presumption with respect to lawyer principals in other cases decided both before and after the Commission issued its *Clarification*. *See, e.g., Victory Media, Inc., supra*, 2 FCC Rcd at 1760-1761, remanded, FCC 88-134, released April 12, 1988; *Tulsa Broadcast Group, supra*, 2 FCC Rcd 6129-6130. To the extent that these or other cases are inconsistent with the Commission's 1986 Clarification order with respect to attorney principals, we are confident that any such errors will be corrected upon proper review. Or, as the case may be, the Commission may take the opportunity to further clarify its position on this increasingly prevalent issue in adjudicatory cases.

[41] TV 30 Exceptions at 6.

[42] *Id.*

[43] *Id. at 7-8.*

[44] A perfect "tidbit" of such testimony is found in All Nations' own exceptions: it reproduces the following record exchange with F. Patrick Pearce, Jr., its intended station's operations manager:

> Q. Would Mr. Bass in his capacity as Coordinator of Black Programming, would he be responsible for producing specific public affairs programming?
>
> A. Yes, I think he would certainly help in that area.

All Nations Exceptions at 20. Pearce also testified that, in Canales' role as coordinator of Hispanic programming, Canales would have only a "very strong role in the selection of Spanish language programming." Id. (quoting Tr. 1770).

[45] Technically speaking, it is to an ALJ's "credibility" findings to which both the Board and Commission show considerable obeisance, *TeleStar, Inc.*, 2 FCC Rcd 5, 12-13 (Rev. Bd. 1987), aff'd, FCC 88-171, released May 19, 1988, and the ALJ did not here find any of All Nations' witnesses to be lacking in credibility. Indeed, the ALJ accepted as true the testimony offered, but drew adverse inferences therefrom. *See I.D.*, paras. 281-283.

[46] The reticence of the exceptors on this matter may be explained by the fact that, at best, All Nations seeks only an 80% fulltime "integration" factor, and may therefore not have been viewed as a comparative threat to those receiving or seeking a 100% corresponding factor.

[47] All Nations Exceptions at 24-31.

[48] We also reject TV-30's claim that, because of licensee discretion, the amount of Asian-language programming now available "could disappear". This contention is speculative; and - by TV 30's standard - no current amount of specialized programming could ever be deemed "substantial." Ironically, there is no greater guarantee that TV-30 would continue its proposed specialized format, which is why the Commission is very reluctant to base its comparative preferences on programming differences as a general rule. For a fuller discussion, *see Knoxville Broadcasting Corp.*, 103 FCC 2d 669, 689-691 (Rev. Bd. 1980)(referencing the procedural *cordon sanitaire of* the threshold showing).

[49] All Nations Exceptions at 29.

[50] We depart from the ALJ's analysis in this regard, and observe that although the Commission abolished its formal ascertainment requirements, it retained the "obligation on the part of each station to offer programming responsive to community issues." *Deregulation of Radio*, 87 FCC 2d 797, 804 (1981), quoted in *Wilshire District Broadcasting, supra*, 101 FCC 2d at 910.

[51] The Commission has anticipated that, in occasional comparative licensing cases, there might be no meaningful differences between two (or more) competing applicants; and that in such cases a "tie-breaker" lottery would ensue. *Lottery Selection Among Certain Applicants*, 57 RR 2d 427, 430-432 (1984). Judicial review of the Commission's "tie-breaker" lottery policy was declined on ripeness grounds, *National Latino Media Coalition* v. *FCC*, 816 F.2d 785 (1987), because the Commission had not yet (and might never) confront an actual tie. Consequently, the "tie-breaker" lottery is theoretically available, albeit judicially unreviewed.

[52] *Remanded on other grounds*, 93 FCC 2d 1275 (1983).

[53] In retrospect, and considering the criticism that has attended *New Continental's* decisional emphasis on a factor so objectively questionable, *see supra* para. 7, it is the opinion author's view that the Commission may wish to review this matter with an eye toward deemphasizing minor "integration" percentage differences and turning sooner to the qualitative differences in applicants integrating more than a majority of their ownership.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-32

In the Matter of

Amendment of Section 73.202(b),	RM-5006
Table of Allotments,	RM-5040
FM Broadcast Stations.	RM-5041
(Greenwood, Seneca, Aiken and	RM-5217
Clemson, South Carolina, and	RM-5300
Biltmore Forest, North Carolina)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 13, 1988; Released: July 5, 1988

By the Commission:

1. The Commission has before it for consideration the Application for Review filed by Tri-County Broadcasting Corporation (Tri-County) of the *Report and Order* in this proceeding.[1] Tri-County seeks reconsideration insofar as that action denied its counterproposal to allot FM Channel 243A to Clemson, South Carolina. Shamrock Communications, Inc. (Shamrock) filed a Consolidated Opposition to Application for Review.[2]

BACKGROUND

2. The action below, as reflected in the *Report and Order*, allotted channels to two communities, including Channel 243A to Biltmore Forest, North Carolina, as its first local service. [3] The Biltmore Forest proposal conflicted with Tri-County's counterproposal to allot Channel 243A to Clemson. The Clemson counterproposal was denied for failure to conform to Section 73.315(a) of the Commission's Rules. That section provides that a transmitter must be located so as to place a signal of 70 dBu, or 3.16 mV/m, over the entire principal city to be served from a site complying with the minimum distance separation requirements. In contrast, Tri-County demonstrated that the requisite signal on Channel 243A could encompass only 87 percent of the community of Clemson and then only at the most favorable site. Tri-County argued that Channel 243A could be allotted there based on substantial compliance with Section 73.315(a). That contention was rejected. It was noted that Tri-County failed to cite any precedent for waiving the 100 percent coverage requirement in the allotment, as opposed to the application, context under similar circumstances. Accordingly, no comparison was made of the broadcast needs of Biltmore Forest and Clemson pursuant to Section 307(b) of the Communications Act of 1934, as amended.

APPLICATION FOR REVIEW

3. Tri-County first argues that pursuant to *WAIT Radio, Inc. v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969), *cert. den.*, 409 U.S. 1027 (1971), a waiver of a general rule which is deemed valid because its overall objectives are in the public interest is appropriate where an applicant proposes a new service which will not undermine the policy served by the rule. According to Tri-County, the 100 percent coverage requirement should have been waived below in light of substantial compliance. Tri-County points out that in the application context a showing of 80 percent or more principal city coverage is regarded as substantial compliance, and no waiver is required. It submits that this evidences a Commission determination that the public interest benefits underlying Section 73.315(a) will be served when a station provides at least 80 percent coverage. Tri-County asserts that the same rationale should apply in the allocation context and that a Clemson allotment would substantially comply with Section 73.315(a). Further, Tri-County asserts that it is irrelevant whether waivers have ever been granted at the allocation stage, and, despite language in the *Report and Order* to the contrary, there is precedent for doing so, citing *Oak Beach and Bay Shore, New York*, released April 3, 1986 (Mimeo No. 3533).

4. Tri-County next argues that pursuant to Section 307(b) of the Act its counterproposal should be preferred over the Biltmore Forest proposal. According to Tri-County, the provision of a first local service is substantially less important to the small residential community of Biltmore Forest whose residents are amply served by stations licensed to nearby Asheville, North Carolina, than to the larger community of Clemson which lies outside any urbanized area and has no fulltime local service.

SHAMROCK OPPOSITION

5. Shamrock argues that it is reasonable to require channel allocation petitions to comply with both the minimum distance separation and city grade coverage requirements. According to Shamrock, to do otherwise would complicate the rule making process substantially by necessitating evaluations of complex transmitter site and coverage issues in advance of the filing of applications. Shamrock asserts that, at the least, Tri-City's inability to provide complete coverage of Clemson must be considered in comparing the conflicting proposals. Further, Shamrock distinguishes *Bay Shore, supra*, noting unique circumstances, including the provision of first local service, the use of revenues from a lease of station facilities to restore a historic structure, and the expectation that a 70 dBu signal passing over water would extend further than normal to encompass the entire principal community.

DISCUSSION

6. Commission practice is generally to deny allocation requests in situations where the principle city coverage requirement of Section 73.315(a) cannot be complied with. *See, e.g. Wadley and Dadeville, Alabama*, 51 FR 24351, July 3, 1986; *New Boston, Ohio*, 48 RR 2d 1628 (1981); and *Attica, New York*, 54 FCC 2d 1137 (1975). As the Commission has noted, it ordinarily does not make allotments in circumstances where the channels could not be used to provide the requisite coverage. *Attica*, at 1139. It would be counterproductive to allot a channel whose utili-

zation could not result in a signal of adequate quality. Resources would generally be wasted in rule making proceedings to allot channels which from the outset could not conform to Commission rules, such as that set forth in Section 73.315(a). Since Tri-County's proposal does not conform to the threshhold principal city coverage requirement, it is not appropriate to compare Biltmore Forest and Clemson pursuant to Section 307(b).

7. The Commission does, of course, consider waivers of its city grade coverage requirement. For good reason, however, consideration is generally limited to the application context. It is generally only at that stage that the Commission has before it the information necessary to make informed judgments. The Commission generally cannot, in the course of rule making proceedings, evaluate the actual transmitter sites that will be specified in applications not yet filed. A party requesting waiver at the allotment stage may not turn out to be the successful applicant, and its site may, therefore, not be the one ultimately utilized. In contrast, at the application stage, all applicants and their proposed sites are on record, and the Commission can evaluate compliance with its rules. In the instant situation, the closest site theoretically available to serve Clemson would allow for only 87 percent city grade coverage. However, at the application stage it could be discovered that no proposed sites are close enough to Clemson to provide substantial coverage of the community. Consideration of Tri-County's waiver request at the allotment stage would, thus, be premature.

8. Tri-County correctly cited one instance where the Commission waived the city grade coverage requirement in the rule making context. However, in the *Bay Shore* case the evidence presented in the rule making showed that there was only one site from which to operate a station serving the affected community, regardless of the extent of any waiver. Thus, the Commission there had no reason to limit consideration of a Section 73.315(a) waiver to the application stage. In other words, the factual situation was such that the Commission could as readily determine the extent of any waiver required in the rule making context as it could subsequently in the application context. *See Oak Beach and Bay Shore, New York*, 2 FCC Rcd 1293 (1987). Thus, Tri-County's reference to *Bay Shore* is inapposite. It is clearly not the Commission's general policy to waive Section 73.315(a) in order to proceed with a channel allotment in a situation such as Clemson where the possible sites are not known. Accordingly, the Commission finds that Tri-County has failed to provide sufficient reason to waive the principal community coverage rule. The Commission affirms the action allotting Channel 243A to Biltmore Forest without reaching the Section 307(b) comparative analysis.

9. In its pleading, Tri-County demonstrated the need for a first FM service to Clemson. In such instances, the staff on its own motion performs a channel search for an alternate channel. The Commission has determined that Channel 285A can be allotted with one contingency. Currently there would be a short spacing to the existing site of Station WAGQ(FM), Channel 284C2, Athens, Georgia. A construction permit has been issued to Broadcast Properties, Inc., the licensee of Station WAGQ,[4] to relocate its transmitter to a site which would be compatible with a Channel 285A allotment at Clemson. Thus, the Commission will allot Channel 285A but will not open the application window until Station WAGQ completes construction as authorized and is licensed to operate at the new site.

10. The public interest will be served by allotting Channel 285A to Clemson, thereby providing that community with its first fulltime local service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), and 303(g) and (r) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 19, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Clemson, South Carolina	285A

11. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this *Memorandum Opinion and Order* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Broadcast Properties, Inc., 2500 West Broad Street, Athens, Georgia 30306.

12. IT IS FURTHER ORDERED, That the Application for Review filed by Tri-County Broadcasting Corporation IS DENIED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Karl Kensinger, Mass Media Bureau, (202) 634-6530. For information related to the window application process, contact The Audio Services Division, FM Branch, (202) 632-6908.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] 2 FCC Rcd 3583 (1987).

[2] A separate Application for Review filed by Eaton Broadcasting Corp. was withdrawn.

[3] Thirteen applications have been filed for Channel 243A at Biltmore Forest.

[4] File No. BMPH8703020A.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Employee Responsibilities
and Conduct; Acceptance
of Gifts, Entertainment
and Favors

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 1988; Released: July 5, 1988

By the Commission:

1. On March 12, 1987, the Commission amended Part 19 of its rules governing Employee Responsibilities and Conduct, which generally prohibits Commissioners and employees from accepting gifts or anything of monetary value from a prohibited source, *e.g.*, a Commission regulatee or other interested person. *In the Matter of Amendment of section 19. 735 - 202 of the Commission's Rules*, FCC 86-525, 52 *Fed. Reg.* 7577 (1987). The *Order* clarified that Commissioners and employees may not accept one-on-one meals from prohibited sources but may attend group functions and accept meals and/or refreshments, not lavish in kind, as long as the Office of General Counsel makes a prior determination that attendance is necessary to assist the employees in performing their official duties.[1]

2. The Commission's *Order* also specifically excluded from the prohibition against accepting gifts, one-on-one meals provided by those "persons who cannot directly benefit from the Commission's regulatory activities (*e.g.*, press organizations not affiliated with FCC licensees)."[2]

3. On October 23, 1987, the Office of Government Ethics issued a Memorandum on *Acceptance of Food and Refreshments by Executive Branch Employees* (*OGE Memorandum*). [3] *Inter alia*, the OGE Memorandum directed executive branch employees not to accept one-on-one meals from any individual or organization who offers them "anything of monetary value . . . simply because of their official position."[4] By way of illustration, the OGE Memorandum cited the very exception that the Commission's *Order* had attempted to carve out -- "a reporter seeking information from, or an interview or ongoing working relationship with, a government employee because of the employee's official position."[5]

4. In response to OGE's memorandum, the Commission is amending the definition of prohibited source contained in section 19.735-202(a) of its rules to include any person or organization who is offering anything of monetary value to a Commission employee because of the employee's official position. *See Appendix* attached hereto. While the Commission is not part of the executive branch, we have historically looked to the Office of Personnel Management and OGE for guidance on and approval of our Part 19 rules. This amendment will eliminate the exception to the prohibition against one-on-one meals for those persons who cannot directly benefit from the Commission's regulatory activities, *e.g.*, press organizations not affiliated with FCC licensees.[6]

5. We find that prior notice and public comment procedures are unnecessary to implement these revisions of general rules of agency practice and procedure. 5 U.S.C. § 553(b)(3)(A).

6. In view of the foregoing and pursuant to sections 303(r), and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 154(i) and the Office of Government Ethics Memorandum on *Acceptance of Food and Refreshments by Executive Branch Employees*, issued October 23, 1987, it is HEREBY ORDERED that Part 19 of the Commission's rules is amended as set forth in the Appendix below, effective **August 19, 1988.**

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

Part 19 -- EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. In 47 C.F.R. Part 19, *Subpart B - Ethical and Other Conduct and Responsibilities of Employees*, section 19.735-202 is amended by adding the following new subsection:

(a) * * *

(5) Is offering anything of monetary value to an employee because of the employee's official position.

2. In 47 C.F.R. Part 19, *Subpart* B - *Ethical and Other Conduct and Responsibilities of Employees*, section 19.735-202, a reference in paragraph (b)(2) is revised to 47 C.F.R.

§ 19.735-202(a)(1)-(5), and a new note is added to read as follows:

(b) * * *

(i) * * *

(ii) * * *

Note: These situations are elaborated upon in an October 23, 1987, Office of Government Ethics Memorandum on *Acceptance of Food and Refreshments by Executive Branch Employees.*

FOOTNOTES

[1] 52 Fed. Reg. at 7578, ¶ 5.

[2] *Id.*

[3] The Office of Government Ethics was established as part of the Office of Personnel Management by the *Ethics in Government Act of 1978*, Pub. L. 95-521, § 401, 92 Stat. 1824, 1862 (1978).

[4] *OGE Memorandum* at 3. In its memorandum, OGE explained that the term "one-on-one" meals "should not be read so literally as to cover only those situations where there is one host and one guest." It includes "any situation where one or more prohibited sources host one or a very small number of employees with or without their spouses at a restaurant or private club where the meal is purportedly the reason for the individuals to meet at that time." *Id.* at 1.

[5] *Id.*

[6] Immediately upon release of the October 23, 1987 Memorandum from OGE, Commission employees seeking clearance of invitations from the Office of General Counsel were advised that they are not permitted to accept one-on-one meals from the press.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 88-328

In the Matter of

Revision of Application for
Construction Permit for
Commercial Broadcast Station
(FCC Form 301)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 20, 1988; Released: July 5, 1988

By the Commission:

INTRODUCTION

1. An *ad hoc* committee of the Federal Communications Bar Association (FCBA) has informally proposed that the Commission: (a) revise FCC Form 301 to require the submission of additional information for applicants for new commercial broadcast stations; and (b) make certain changes in the broadcast comparative hearing process.[1] The FCBA contends that the revisions, discussed below, will facilitate the adjudicatory process for new broadcast applications by requiring applicants to submit necessary information earlier in the process and will discourage the filing of sham or "skeleton" applications. Moreover, the FCBA states that its proposal would not burden applicants, since it would require applicants to provide information that they should already have collected prior to signing and filing their applications. We are initiating this proceeding to seek comment on whether certain of the changes proposed by the FCBA, or related changes, would serve the public interest.

THE FCBA PROPOSAL

2. *Section II - Ownership*. The FCBA proposes to modify, in three respects, the ownership section of FCC Form 301, as it relates to applicants for new stations. First, the FCBA recommends that Item 1 be revised to require corporate and partnership applicants to specify both the date and place of incorporation and the place of organization. Currently, the form only requires that an applicant identify its form of organization (*e.g.*, partnership, corporation). We note that this additional information may help establish that the applicant is a bona fide entity. However, given the ease with which a partnership or a corporation may be established, this requirement may hamper the emergence of new applicants and encourage additional litigation over minor corporate imperfections without curbing abusive practices. Second, in recognition of the fact that equity ownership is often an issue in comparative hearings, the FCBA proposes to broaden Item 4 to require the identification of attributable interests held by all equity owners, including limited partners and non-voting stockholders, as well as principals.[2] We note that this requirement, if adopted, may need to be more limited in scope than proposed by the FCBA (e.g., be limited to non-public corporate and partnership applicants), as documentation may well prove overly burdensome for publicly-held corporate entities. Finally, in order to ascertain the real party-in-interest represented by the application, the FCBA proposes to reinstate Item 9 from former FCC Form 301. That provision required the disclosure of any documents, contracts or understandings regarding current or future ownership rights. This information is still required by FCC Forms 314 and 315, relating to assignments of licenses and transfers of control. [3]

3. *Section III -- Financial Qualifications* : The FCBA proposal also calls for limited reimposition of the requirement that applicants provide certain financial documentation with their applications, a filing requirement eliminated in 1981. According to the FCBA, a more detailed financial filing requirement would eliminate the waste of resources expended upon, and the delays occasioned by, the consideration of applicants that are not financially qualified. Specifically, the proposal would require applicants for new stations to: 1) list the estimated costs of construction and the first three months of operation; and 2) identify the source and amount of its funds, including name, address, and relationship, if any, of the source to the applicant. In addition, the FCBA proposal suggests that detailed information regarding financial qualifications requirements be incorporated into the instructions to FCC Form 301. (The FCBA does not specify the content of such instructions, however.)

4. With regard to financial qualifications matters, we specifically ask for comments on the documentation or criteria appropriate to demonstrate financial capability. Additionally, we request comments on the appropriateness of changing the standard for evaluating the availability of funds for new broadcast station applications from the current "reasonable assurance" standard[4] to a "firm financial commitment" standard.[5]

5. *Integration Proposal*. The FCBA recommends further that Form 301 be revised to elicit information concerning new applicants' integration proposals. At the time of application, applicants for new stations would be required to specify the hours and duties of each principal who proposes to work at the station. Currently, integration proposals are either established during the discovery process or submitted pursuant to an Order by the presiding Administrative Law Judge.

6. *Additional FCBA proposals*. In addition to the above proposed modifications to Form 301, the FCBA recommends that the Commission: 1) aggressively review financial showings on a random basis; 2) amend Part 73 to establish a single cut-off date for the filing of all amendments as of right without exception (*see* 47 C.F.R. §§ 73.3564, 73.3566 and 73.3568); and 3) amend Part 1 to promulgate interim procedures to implement the proposed recommendations, pending modification of FCC Form 301. For the reasons stated below, the Commission does not believe these three procedural modifications warrant further consideration, and thus is not seeking comments on these matters.

7. With regard to the first of these recommendations, we note that while we have no problems with the substance of the suggestion, we believe that we are already doing just what the FCBA proposes. The Commission recently

has instituted and is actively conducting a program of random financial review as part of the Mass Media Bureau's pre-designation processing of applications. *Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits*, Public Notice No. 87-97 (March 19, 1987).

8. Under the FCBA's recommendation, applicants with applications returned as defective, and who filed or are planning to file a petition for reconsideration and reinstatement *nunc pro tunc*, would be required to file provisional amendments by the same amendment deadline established for applications still being processed. In our experience, however, few applications returned as defective are subsequently reinstated; second cut-off dates have thus been rare. The Commission therefore believes that this procedural modification would tax our limited resources by requiring the tracking and maintenance of returned applications with few, if any, offsetting benefits.

9. Finally, we decline to implement interim procedures pending the proposed modifications to Form 301. The Commission plans to evaluate the comments it receives in this proceeding expeditiously. Therefore, we do not believe that an amendment to Part 1 to establish interim procedures pending the outcome of this proceeding is warranted. We anticipate that if the proposed revisions are adopted and approved by the Office of Management and Budget we would promptly issue a Public Notice notifying parties of the new requirements pending printing of a new Form 301.

CONCLUSION

10. The Commission seeks comment on the FCBA proposed revisions to FCC Form 301, including the proposed financial standard change, as set forth above. In particular, commenters are requested to focus on anticipated benefits to, and burdens on, applicants and the Commission, as well as public interest considerations. Commenters should address the nexus between the proposals and the anticipated objectives (i.e., whether the proposals will effectively curb sham applications, encourage settlements and facilitate the comparative hearing process). In this regard, commenters should assess whether the proposed recommendations would expedite or delay the process of granting Commission authorizations and institution of service to the public. We recognize that the proposed changes may result in: (a) increased filings of petitions to deny, (b) increased staff processing burdens, (c) designation of additional hearing issues (or at least additional requests for designation of such issues) and (d) more complicated or prolonged litigation, all of which may be detrimental to applicants and the public interest. Commenters should also specifically discuss whether the proposed changes would deter the filing of applications by otherwise-qualified new broadcast entrepreneurs, a result that would concern us.

11. This *Notice of Proposed Rule Making* is issued under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.1415 and 1.1419, interested parties may file comments on or before **August 26, 1988,** and reply comments on or before **September 12, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 C.F.R. § 1.1203.

13. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. 47 C.F.R. § 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) that summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. 47 C.F.R. § 1.1206.

14. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 603, the Commission's initial analysis is as follows:

I. ***Reason for action***

This action was initiated by a proposal informally presented by the Federal Communications Bar Association to revise FCC Form 301. The proposed revisions under consideration would require applicants for construction permits for new broadcast stations to submit with their applications additional information with respect to ownership, integration of ownership and management and financing. Changes in the financial qualifications standard are also being considered.

II. ***Objective***

The reasons for imposing additional information requirements at the application stage (or imposing a more stringent financial qualifications standard) include: 1) deterrence of sham applications; 2) encouragement of the settlement process; and 3) facilitation of the comparative hearing process.

III. ***Legal Basis***

The Commission has authority to institute the proposed revisions to FCC Form 301 pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

IV. ***Entities affected; Nature of Economic Impact; Significant Alternatives.***

The imposition of additional reporting requirements will somewhat increase the costs of filing an application for a construction permit for a new broadcast station. The additional costs for small business entities with *bona fide* applications should be negligible, since they should already have the documentation or underlying information at hand. Moreover, since the proposed changes are designed to expedite the hearing process, many applicants' overall costs may be reduced. As an alternative, the Commission could retain the present FCC Form 301, a choice the Commission may make after evaluating the comments. The imposition of a "firm financial commitment" requirement would likely increase the costs to applicants by requiring them to pay a loan commitment fee.

V. ***Record keeping and other compliance requirements***

The revision of FCC Form 301 would call for additional reporting requirements.

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirements is subject to approval by the Office of Management and Budget as prescribed by the Act.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] We note that in 1981 Form 301 was revised to eliminate various information submission requirements. *Revision of Application for Construction Permit for Commercial Broadcast Station*, 50 RR 2d 381 (1981).

[2] *See* 47 C.F.R. § 73.3555.

[3] Specifically, Section II, Item 9 of FCC Forms 314 and 315 state:

> Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?
>
> If Yes, provide particulars as Exhibit No. .

[4] *See* , *e.g.*, *Alexander S. Klein*, Jr., 36 RR 2d 94 (Rev. Bd. 1976); *Town and Country Radio, Inc.*, 33 RR 2d 671 (Rev. Bd. 1975); *Lamar Life Broadcasting Co.*, 20 RR 2d 509 (Rev. Bd. 1970).

[5] *See* Amendment of the Commission's Rules for Rural Cellular Service, FCC 88-388, released February 19, 1988 (in the interest of deterring speculative applications, the Commission requires cellular applicants to demonstrate a "firm financial commitment" at the application stage).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-315

In the Matter of

Amendment of Section 73.202(b), RM-6308
Table of Allotments,
FM Broadcast Stations.
(Hawesville, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1988; **Released: July 5, 1988**

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Harold Wayne Newton (petitioner) seeking to allot Channel 234A to Hawesville, Kentucky, as its second FM service. Petitioner stated his intention to apply for use of the channel.

2. We believe that the proposal warrants consideration. The allotment can be made in compliance with minimum distance separation requirements.[1] Accordingly, the Commission seeks comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Rules with regard to Hawesville, as follows:

	Channel No.	
City	Present	Proposed
Hawesville, Kentucky	289A	234A, 289A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **August 26, 1988,** and reply comments on or before **September 12, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Harold Wayne Newton
P.O: Box 355
Hawesville, Kentucky 42348
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 234A at Hawesville using city reference are 37-54-12 and 86-45-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-314

In the Matter of

Amendment of Section 73.202(b), RM-6266
Table of Allotments,
FM Broadcast Stations.
(Kahalu'u, Hawaii)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1988; Released: July 5, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Timothy D. Martz (petitioner), which seeks to allot Channel 291A to Kahalu'u, Hawaii, as that community's first FM service. Petitioner stated his intention to apply for use of the channel. Channel 291A can be allotted to Kahalu'u in compliance with the minimum distance separation requirements.[1]

2. Accordingly, in order to provide a first FM channel to Kahalu'u, Hawaii, comments are invited on the proposal to amend the FM Table of Allotments (Section 73.202(b) of the Rules) with regard to the following community:

	Channel No.	
City	Present	Proposed
Kahalu'u, Hawaii	---	291A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **August 26, 1988,** and reply comments on or before **September 12, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy D. Martz
187 Brookmere Drive
Fairfield, Connecticut 06430
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 291A at Kahalu'u are 19-35-00 and 155-58-09.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-313

In the Matter of

Amendment of Section 73.202(b), RM-6375
Table of Allotments,
FM Broadcast Stations.
(Eagle River, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 25, 1988; Released: July 5, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of Nicolet Broadcasting Inc. (petitioner), licensee of Station WRJO(FM), Channel 232A, Eagle River, Wisconsin, the Commission considers herein a proposal to substitute Channel 233C2 for Channel 232A at Eagle River and to modify the station license to specify operation on Channel 233C2. Petitioner submitted information in support of the proposal.

2. The channel substitution can be made consistent with the Commission's minimum distance separation requirements with a site restriction of 18.9 kilometers (11.7 miles) north of Eagle River.[1] The restriction is necessary in order to protect a pending proposal to allot Channel 234C2 to Mosinee, Wisconsin. *See* MM Docket No. 87-258, 2 FCC Rcd 4381 (1987). Petitioner indicates a willingness to relocate its current transmitter site.

3. As requested, we shall propose to modify the license of Station WRJO(FM) to specify operation on Channel 233C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Eagle River.

4. We believe the public interest would be served by proposing the substitution at Eagle River, since it could provide that community with its second wide coverage area FM service. Accordingly, the Commission proposes to amende the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Eagle River, Wisconsin	232A	233C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 26, 1988,** and reply comments on or before **September 12, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Mark E. Fields, Esquire
Miller & Fields, P.C.
P. O. Box 33003
Washington, D. C. 20033
(Counsel for petitioner)

Nicolet Broadcasting, Inc.
Box 309
Eagle River, WI 54521
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for the proposed site are 46-05-00 and 89-11-47.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-312

In the Matter of

Amendment of Section 73.202(b),	RM-6127
Table of Allotments,	RM-6135
FM Broadcast Stations.	
(Pearl and Magee, Mississippi)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 25, 1988; Released: July 5, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration two conflicting petitions for rule making. The first was filed by Colon Johnston (Johnston), requesting the allotment of FM Channel 230A to Pearl, Mississippi. The second petition was filed by Airwaves Company (Airwaves), proposing the allotment of FM Channel 230A to Magee, Mississippi. The allotment could provide a first broadcast service to Pearl or a second service to Magee. Johnston and Airwaves both indicated their intention to file an application for Channel 230A in the respective communities.

2. We shall offer both proposals for comment and request the petitioners or other parties to provide a comparative analysis on the proposals. Channel 230A can be allotted to Pearl in compliance with the minimum distance separation requirements provided there is a site restriction 7.1 kilometers (4.4 miles) northeast of the community.[1] The site restriction will prevent a conflict with Station WHJT, Channel 228A, Clinton, Mississippi. Channel 230A can be allotted to Magee in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules, provided that Station WXLT, Channel 231C2, McComb, Mississippi, relocates its transmitter site and increases its facility to Class C1 standards in accordance with a construction permit issued by the Commission (File No. BMPH-861113IA).[2] Should Channel 230A be allocated to Magee, the opening of a window for the filing of applications will be delayed until the grant of a covering license for the McComb station's construction permit.

3. In order to provide a first FM broadcast service to Pearl or a second service to Magee, Mississippi, the Commission propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
ALTERNATIVE I		
Pearl, Mississippi	—	230A
ALTERNATIVE II		
Magee, Mississippi	298C1	230A, 298C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 26, 1988,** and reply comments on or before **September 12, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Colon Johnston 20 Nelson Circle Jackson, Mississippi 39212 (Petitioner for Channel 230A at Magee)	Mr. Bob R. Kidd Airwaves Company P.O. Box 976 Rayville, Louisiana 71269 (Petitioner for Channel 230A at Pearl)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The restricted site coordinates are 32-15-07 and 90-03-41.

[2] The coordinates for Channel 230A at Magee are 31-52-18 and 89-43-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-311

In the Matter of

Amendment of Section 73.202(b), RM-6230
Table of Allotments,
FM Broadcast Stations.
(Richton, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 25, 1988; Released: July 5, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Richton Broadcasting Company (petitioner), seeking the allocation of FM Channel 243A to Richton, Mississippi, as that community's first FM broadcast service.[1] Petitioner submitted information in support of the proposal and stated its intention to file an application for the channel.

2. We believe petitioner's proposal warrants consideration. Channel 243A can be allocated to Richton, Mississippi, in compliance with the minimum distance separation requirements of the Commission's Rules.[2]

3. In view of the fact that the proposed allocation could provide a first broadcast service to Richton, Mississippi, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Richton, Mississippi	---	243A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 26, 1988,** and reply comments on or before **September 12, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richton Broadcasting Co.,
c/o Miller and Fields, P.C.
P.O. Box 33003
Washington, D.C. 20033

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Petitioner originally requested the allotment of FM Channel 271A at Richton. However, Channel 271A conflicts with a new rule making to substitute Channel 271C2 for Channel 271A at Monticello, Mississippi (RM-6047). Therefore, we have substituted Channel 243A.

[2] The coordinates used for Channel 243A at Richton are 31-16-12 and 88-56-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-382

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Colonial Heights, Petersburg and Charlottesville, Virginia) RM-5904

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 31, 1988; Released: July 5, 1988

By the Deputy Chief, Policy and Rules Branch:

1. At the joint request of WPVA, Inc. (WPVA), licensee of Station WKHK(FM), Channel 237A, Colonial Heights, Virginia and Charlottesville Broadcasting Corporation (CBC), licensee of Station WQMC(FM), Channel 237A, Charlottesville, Virginia, the Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 2 FCC Rcd 5864 (1987), proposing the substitution of Channel 237B1 for Channel 237A at Colonial Heights and modification of the license of Station WKHK(FM) to specify operation on the higher class co-channel.[1] The *Notice* also proposed the substitution of Channel 236A for Channel 237A at Charlottesville in order to accomplish the substitution at Colonial Heights. In joint comments WPVA and CBC (petitioners), expressed their continued support for the proposal. Petitioners reaffirmed their intention to modify their facilities accordingly.

2. After careful consideration of the proposal, we conclude that the public interest would be served by the channel substutition at Colonial Heights, as a first wide coverage area FM service. In order to accomplish the substitution at Colonial Heights Channel 236A must be substituted for Channel 237A at Charlottesville. Both substitutions can be made in compliance with the Commission's minimum spacing requirements from the current sites of both stations.[2] In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WKHK(FM) at Colonial Heights, to specify operation on Channel 237B1.

3. Commission policy requires that Station WQMC(FM) be reimbursed for the reasonable costs of changing frequencies from one Class A to another. WPVA has agreed to reimburse Station WQMC(FM) for changing frequency.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 19, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Charlottesville, Virginia	224A, 236A, 248, 298A
Colonial Heights, Virginia	237B1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WKHK(FM), Colonial Heights, Virginia IS MODIFIED, to specify operation on Channel 237B1 in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WQMC(FM), Charlottesville, Virginia IS MODIFIED, to specify operation on Channel 236A in lieu of Channel 237A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-840229CP except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-840229CP except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Report and Order*, to the licensee of Station WQMC(FM), as follows: Charlottesville Broadcasting Corporation, P. O. Box 498, Charlottesville, Virginia 22902.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Channel 237A was allocated to Petersburg, Virginia but used at Colonial Heights. In the *Notice* we proposed the reallotment of the channel from Petersburg to reflect its actual usage at Colonial Heights. However, the revised FM Table of Allotments implementing BC Docket No. 80-90 listed the actual community of license for Channel 237A at Colonial Heights. *See* 52 FR 39774, October 23, 1987. Therefore, the reallotment of is no longer necessary.

[2] The coordinates of the licensed site at Colonial Heights are 37-20-22 and 77-24-31; and the coordinates for the site at Charlottesville are 38-02-54 and 78-28-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of

Requests of 22 large oceangoing cargo ships for exemption from radiotelegraph requirements	File Nos. X-1588 - 1589 X-1601 - 1614 X-1628 - 1633

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 1988; Released: July 5, 1988

By the Chief, Special Services Division:

1. The above-captioned requests for exemption from the radiotelegraph requirements of Title III, Part II of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. §§ 351 - 354, and of Chapter IV of the International Convention for Safety of Life at Sea, 1974, TIAS 9700 (Safety Convention), were filed by Interocean Management Corporation (IOM), Exxon Communications Company (Exxon), Puerto Rico Marine Management, Inc. (PRMMI), Maritime Overseas Corporation (MOC), Mobil Oil Corporation (Mobil), and West Coast Shipping Company (WCSC). An Opposition to these requests was filed January 14, 1988,[1] by the Radio Officers Union and the American Radio Association (ROU/ARA).[2] Replies were filed January 29, 1988, by Exxon and by the American Institute of Merchant Shipping (AIMS) and PRMMI.

2. The exemption requests at issue include 20 pending requests and two exemptions granted on May 12, 1987, to IOM for the ships GREAT LAND and WESTWARD VENTURE for voyages between Tacoma, Washington, and Anchorage, Alaska. The 20 pending requests for exemptions are for various voyages between the west coast of the 48 contiguous states and Alaska and Panama, and between the Gulf or east coast and Puerto Rico. The voyages between the 48 contiguous states and Alaska or Puerto Rico require exemptions only from the radiotelegraph requirements of the Communications Act. The voyages to Panama require exemptions from the radiotelegraph requirements of the Safety Convention as well. [3] For reasons discussed below we find that the arguments made by ROU/ARA are not persuasive and that the routes or conditions of the voyages and other circumstances are such as to render it unnecessary to require the ships to comply with the radiotelegraph requirements of the Communications Act or Safety Convention. Therefore, we will grant the 20 pending requests and affirm the exemptions granted to the GREAT LAND and WESTWARD VENTURE.

I. PROCEDURE

3. Prior to discussing the merits of this proceeding a number of procedural issues must be addressed. Exxon filed a Motion to Strike the ROU/ARA filing for untimeliness on January 20, 1988, stating that its requests for exemption were filed October 22, 1987, and ROU/ARA did not file until January 14, 1988. The Radio Officers Union (ROU), which states it did not retain counsel until March 9, 1988, filed an Opposition and Reply on March 28, 1988, (preceded by a Motion for Leave to File Late on March 25) addressing the Motion to Strike. Exxon and AIMS and PRMMI filed Oppositions to ROU's Motion for Leave to File Late on April 8, 1988. Because the issues raised by ROU/ARA concern safety of life and property at sea and because we would generally examine the same type of issues in any similar exemption request, we will deny Exxon's motion and consider ROU/ARA's arguments.

4. In a letter to the Commission's Managing Director, Exxon also alleges that ROU/ARA solicited *ex parte* communications in violation of our rules. Letter from Charles M. Meehan to Edward J. Minkel (January 22, 1988). This matter is being considered separately. *See, e.g.*, Letter from Edward J. Minkel to Raul R. Rodriquez and Sally A. Buckman (March 23, 1988). We need not await its resolution before acting on the exemption requests since our action here does not give ROU/ARA the relief they request, and, accordingly, no prejudice has resulted.

II. BACKGROUND

5. The Commission administers the compulsory ship radio requirements for the promotion of safety of life and property at sea in conformance with the Communications Act and the Safety Convention. U.S. passenger ships that carry more than 12 passengers and U.S. cargo ships of 1600 gross tons and upward sailing on domestic or international voyages[4] are required to carry the following:

a. A main and reserve radiotelegraph (manual Morse code) transmitter and receiver.

b. A radiotelegraph auto alarm consisting of an automatic alarm signal keying device and an auto alarm signal receiver which transmit and receive, respectively, the international radiotelegraph alarm signal.

c. An MF radiotelephone transmitter, receiver and antenna capable of communicating ship-to-ship over a distance of 150 nautical miles.

d. A radiotelephone watch receiver for the distress frequency 2182 kHz.

e. An automatic radiotelephone alarm signal generator.

f. A radio direction finder.

g. A radar installation. (Ships of 10,000 gross tons and upward must have two radar installations.)

h. A radiotelephone installation that operates in the VHF band and is capable of operating on the international distress, safety and calling frequency 156.8 MHz.

In addition, a cargo ship that is equipped with a radiotelegraph auto alarm must carry at least one radio officer who has had at least six months previous service as a radio officer on board U.S. ships. A radio officer must hold a first or second class radiotelegraph operator license issued by the Commission and be licensed as a radio officer by the U.S. Coast Guard.

6. Section 352(b) of the Communications Act permits the Commission to exempt cargo ships from these requirements if in the course of their voyages they do not go more than 150 nautical miles from the nearest land and if the Commission considers that the route or conditions of the voyages or other circumstances are such as to render a radio station unreasonable or unnecessary for the purposes of the Act. The Safety Convention also permits exemptions. Regulation 5 of Chapter IV of the Safety Convention permits Administrations to grant exemptions where the maximum distance of the ship from the shore, the length of the voyage, the absence of general navigational hazards, and other conditions affecting safety are such as to render the radiotelegraph station unreasonable or unnecessary. No maximum distance from land is specified.

7. In evaluating an individual request for exemption from the radio requirements of the Communications Act and/or Safety Convention, we review the radio equipment carried on the ship, its ability to communicate with shore stations and other ships, and its capability to come to the rescue of other ships sailing in the same area. At a minimum, a cargo ship seeking an exemption from the radiotelegraph provisions must sail on voyages within 150 nautical miles of the nearest land and carry radio equipment sufficient to maintain communications with shore and ships along the routes of the voyages. Other conditions or circumstances concerning the particular ship and the intended voyage(s) are considered on a case-by-case basis. Additionally, the Commission has provided a general exemption, 47 C.F.R. § 80.836(c), for ships with specified state of the art communications equipment on voyages along the coasts of the 48 contiguous states. A ship that meets the requirements of that rule may sail without a radiotelegraph station. No other authorization is required. The Commission adopted Section 80.836(c) after a Rule Making proceeding in which it carefully evaluated all viewpoints, including many of the same arguments made here by ROU/ARA. *Amendment of Part 83*, 89 FCC 2d 40 (1982), *aff'd sub nom. American Radio Ass' n v. FCC*, 690 F.2d 334 (2d Cir. 1982), *cert. denied*, 460 U.S. 1051 (1983). Ships granted individual exemptions are required to meet essentially the same equipment requirements and other conditions specified in Section 80.836(c).

III. DISCUSSION

8. The voyages covered in the exemption requests and the two exemption grants at issue are primarily extensions of the voyages permitted by the general exemption in Section 80.836(c). In each case the ship operator will carry at least as much radio equipment as Section 80.836(c) requires. In opposing all 22 exemptions, ROU/ARA reiterate arguments made in the general exemption Rule Making proceeding. Essentially they argue:

a. The Commission lacks statutory authority to grant the exemptions;

b. Granting the exemptions would have an adverse impact on national security by diminishing the pool of manual Morse code radiotelegraph operators available for national defense needs; and

c. Granting the exemptions would decrease safety of ships at sea.

A. *Statutory Authority*

9. It is clear from the plain meaning of 47 U.S.C. § 352(b) that the Commission has the statutory authority to grant the exemptions. Section 352(b) provides in pertinent part, the Commission may, if it considers that the route or the conditions of the voyage or other circumstances are such as to render a radio station unreasonable or unnecessary for the purposes of [Title III, Part II of the Communications Act], exempt from [its] provisions any ship or class of ship which falls within any of the following descriptions: . . (2) Cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land . . . . In addition, this issue was raised by the ROU/ARA and thoroughly treated in the general exemption proceeding, *Amendment of Part 83*, *supra*, at 51-53, and the Commission's authority was upheld in the courts on appeal. *American Radio Ass' n v. FCC*, *supra*. Thus, the Commission clearly has authority to grant such exemptions.

B. *National Security*

10. The grant of the subject exemption requests would have no impact on national security. The U.S. Navy does not rely on manual Morse code telegraphy for ship-to-ship or ship-to-shore communications. Thus no interoperability requirement with the Navy exists for a radiotelegraph operator on cargo ships. Additionally, the Navy does not even maintain a watch on the 500 kHz Morse code distress frequency. Further, we asked the Navy whether it had any objections or concerns regarding the requested exemptions. Letter from Dennis R. Patrick, Chairman, to Admiral C.A.H. Trost (February 3, 1988). The Navy replied that it had "no objection to granting the proposed exemptions." Letter from C.A.H. Trost, Chief of Naval Operations to Chairman, Federal Communications Commission (April 22, 1988).

11. We provided this exchange of correspondence to the parties to this proceeding and stated that comments should be filed by May 20, 1988. Exxon, AIMS and IOM filed comments on May 20 supporting the Navy's position. ROU filed comments on May 20 criticizing the Navy's position (and questioning the safety record of vessels that are voluntarily equipped with radiotelephone and reiterating its concerns about the routes and conditions of the voyages proposed in the exemption requests). ROU filed additional comments on June 2, 1988, to which it attached a letter dated May 6, 1988, from Lawrence Layman, Director, Space, Command and Control, Office of the Chief of Naval Operations, to ROU. In the June 2 comments ROU attempted to interpret Admiral Layman's letter as support for ROU's position. Admiral Layman, however, has since confirmed that his letter "does not alter nor supersede the CNO's position [as stated in his April 22 letter]." Letter from Admiral Lawrence Layman to Mr. R. H. McNamara (June 3, 1988).[5] In view of the Navy's response, we find no merit in ROU's assertion that the grant of the requested exemptions would have an adverse impact on national security.

C. *Safety*

12. First we note that ROU/ARA have not questioned the specific proposals as to equipment or the routes of the ship's voyages in any of the exemption requests. ROU/ARA argue generally that the exemptions would decrease safety of ships at sea without discussing the par-

ticulars of any request. All the vessels will fit or have fitted at a minimum an earth satellite terminal providing voice and telex communications, a narrow-band direct-printing radiotelegraph, a single sideband radiotelephone, a separate 2182 kHz radiotelephone distress frequency watch receiver and a radiotelephone alarm signal generator, at least two VHF transceivers with emergency and reserve power sources, and a 500 kHz auto alarm receiver. All participate in the Automated Mutual-Assistance Vessel Rescue (AMVER) system. The specific equipment to be carried by each vessel meets or exceeds the requirements of Section 80.836(c). This equipment provides several pathways for communications: satellite - voice and telex; HF telephony and radioteletype; and MF telephony. It provides means for guarding the 500 kHz radiotelegraphy distress frequency and the 2182 kHz radiotelephony distress frequency. The redundancy of equipment and alternate pathways will help ensure that vital messages can get through and will provide reliability at least as great as that obtained by relying on radiotelegraphy. Further, the voyages proposed are within 150 miles of the nearest land and are logical extensions of the coastal voyages for which a general exemption already exists.

13. Throughout ROU/ARA's pleading is the suggestion that granting the exemptions would compromise safety on the ground that radiotelegraphy is superior to any other system for distress and safety communications. We rejected that argument in 1982 when we adopted the general exemption. *Amendment of Part 83, supra, passim.* The argument is even less valid today. We know of no distress situation where absence of radiotelegraphy hindered communications. The systems to be carried by these ships provide multiple pathways for distress and safety communications, and this redundancy increases the probability that vital messages will get through. Additionally, because knowledge of Morse code is not required, almost any person aboard ship could be trained to operate these systems, providing greater flexibility in distress situations. Nevertheless, our rules will continue to require that an FCC licensed radiotelephone operator be on each vessel.

14. ROU/ARA suggest that exempted ships will no longer be part of the pool of large ships that can render assistance to each other as they will not be able to exchange distress messages with other large ships. ROU/ARA Pt. I, 13; Pt. II, 2, 4. To the contrary, the ships will carry 500 kHz (radiotelegraph) auto alarm receivers and auto alarm generators and thus will be able to receive and send radiotelegraph distress alerts. Additionally, all large ships, both those fitted with radiotelegraphy and those without it, are required to keep a telephony watch on 2182 kHz for distress and safety purposes and have a 2182 kHz auto alarm watch receiver and signal generator. The range and other propagation characteristics of 500 kHz and 2182 kHz are similar. Ships can also communicate with each other by other systems, such as HF and VHF telephony, radioteletype, and, increasingly, via satellite systems. In sum, because of the equipment the ships will carry, safety will not be diminished by granting the exemptions.

15. Reliance on radiotelegraphy is continually dropping. One indication of the decline of radiotelegraphy is the closure of several high seas telegraphy public coast stations within the U.S. within the past few years because of declining traffic and increased use of other systems such as narrow-band direct-printing and satellite communications. In recent years the Commission has approved discontinuation of service at WPA, Port Arthur, Texas (November 22, 1983), WSL, Amagansett, N.Y. (August 14, 1984), WOE, Lantana, Florida (June 20, 1986), KCC, Corpus Christi, Texas (December 31, 1986), and WMH, Baltimore, Maryland (May 6, 1988). On the other hand the number of ships fitted with ship earth stations is increasing and is now about 6,000 worldwide. Ocean Voice, October 1987 at 7, 24-25; January 1988 at 24-25. Additionally, as of this date Norway, Liberia, Singapore, Finland, Sweden, the Bahamas, Canada, and Panama have notified the International Maritime Organization (IMO) of their determinations that modern systems are equivalent to the main radiotelegraph installation of current Safety Convention requirements. These equivalencies vary in their details but all reflect a movement away from traditional manual Morse code telegraphy and a dedicated operator/maintainer to modern telephone and data services. Moreover, and quite significantly, ships under 1600 gross tons have never been required to carry radiotelegraph equipment and *sail throughout the world without communications problems*. Use of radiotelegraphy is becoming a less and less common method of ship-to-ship or ship-to-shore communication. The proposal by these ships to fit with satellite and other modern methods of communications and dispense with radiotelegraphy will not reduce their safety or the safety of other vessels that may need to communicate with them in distress situations.

16. In arguing generally against granting all exemptions, ROU/ARA devote considerable attention to the operator/maintainer issue as it relates to the Global Maritime Distress and Safety System (GMDSS)[6]. ROU/ARA Pt. I, 17-19, 27-30; Pt. II, 6, 54. Ships operating under the general exemption are required to have on board maintenance capability. 47 C.F.R. § 80.836(c)(10). A ship with an individual exemption for voyages which essentially are extensions of the routes permitted under the general exemption would also be required to carry a person with the appropriate Commission license capable of maintaining all of the ship's systems used for distress and safety. *See infra*, para. 25(j).

17. ROU/ARA make a number of other general arguments that are not relevant to the exemption requests at issue. ROU/ARA state that weather and sea conditions today are no different from those encountered in the many exemption requests denied before the general exemption rule in 1982 and that dangerous weather and sea conditions may be encountered by the ships requesting exemptions here. ROU/ARA Pt. I, 30; Pt. I, 25-33, 37-43, 53-55. The continuing nature of weather patterns is not relevant to the matter before us. The exemption requests are not based on changes in weather on the ships' routes. Nor did we adopt the general exemption rule because we believed that weather patterns had changed. Rather, advances in technology made other radio equipment available equal or superior to radiotelegraph. In addition, the fact that the ships requesting exemptions may encounter bad weather and seas is not necessarily a sound argument against granting the exemptions because the equipment they will carry will provide communications reliability equal or superior to radiotelegraphy. ROU/ARA question the 150 nautical mile limit, stating that conditions within 150 miles may sometimes be worse than farther out from land. ROU/ARA Pt. II, 6-7, 9, 19-20, 24-25, 37. This is irrelevant, however, since our exemption authority under the Act is limited to voyages within 150 miles of the nearest land.

18. ROU/ARA provide some unsubstantiated descriptions of distress situations the relevance of most of which to radiotelegraph is not clear. ROU/ARA Pt. II, 7-12, 19-20, 38, 44. These descriptions do not weigh against the requested exemptions. ROU/ARA also state that they plan to sponsor a study of distress situations in the future. ROU/ARA Pt. II, 2. As the study does not exist now, however, it cannot have any bearing on the requests under consideration.

19. ROU/ARA additionally set forth a number of criticisms of the GMDSS. ROU/ARA Pt. I, 16-19, 27, 30, Pt. II, 3-5. The GMDSS is not at issue here. Rather we are proposing to provide exemptions according to the terms of the present system as embodied in the Communications Act and the Safety Convention. Accordingly, these criticisms are not relevant to the requested exemptions.

20. ROU/ARA question whether the Commission can enforce the 150 mile limitation. ROU/ARA Pt. II, 13-16. Sufficient incentives and enforcement tools exist to ensure compliance with this limitation. Each of these ships must have an annual inspection by the Commission, each calls at U.S. ports, and routine inspection of logs would reveal any nonconforming voyages. Also we note that the routes proposed by these ships to stay within the 150 mile limitation are not unusual, and are at most only a few miles longer than alternate routes. Additionally, as a practical matter, the ship owner's potential liability in case of an incident on a voyage where the ship was not properly certificated would so greatly outweigh the cost of hiring a radio officer that it would be unlikely that the ship would undertake a voyage outside the 150 mile limit without a radio officer.

21. Concerning the specific routes to be followed, the route to Alaska is along the coast of Canada, and all the proposed voyages are confined to North and Central America. It is also significant to note that Canada provides an exemption for ships of 1600 gross tons and upward if fitted with one VHF, one MF, and one MF-HF radiotelephone installation for voyages north of 17 degrees 15 minutes North Latitude within 600 nautical miles of the American continent. 1978 Can. Gaz. Pt. II, 992, *as amended*, 1983 Can. Gaz. Pt. II, 1498. That covers most of the coast of Mexico and northward. In addition, Canada has filed equivalency statements with the IMO, under which a ship can fit a ship earth station satellite terminal in lieu of its main radiotelegraph installation for any voyage, IMO doc. SLS.14/Circ. 30, January 18, 1983; or in lieu of any radiotelegraph installation for "occasional" international voyages, IMO doc. SLS.14/Circ. 8, March 9, 1981.

22. In reference to the route to Panama, ROU/ARA question whether there might be a language barrier in communications with coast stations in voyages along the coast of Mexico and Central America and with other vessels. They state that the search and rescue (SAR) capabilities are deficient in that area and refer to the gap between the Atlantic and Pacific INMARSAT satellite coverage along a portion of the coast of Mexico. ROU/ARA Pt. II, 12, 21-22, 51. We do not believe that the language barrier in radiotelephony exists to a degree that it inhibits safety communications. *See Amendment of Part 83, supra*, at 55. There are internationally agreed on words such as "MAYDAY," "Q" signals and other abbreviations, and phonetics for letters and numbers to enable voice communications between persons not speaking a common language. *See* international Radio Regulations No. 2938, Articles 39 and 40, and Appendices 14 and 24 (Geneva 1979). Additionally, these ships will have satellite and HF capability to communicate with stations in the United States, including rescue coordination centers, or elsewhere on land or sea by voice or teletype and will have MF capability to communicate by voice with ships or land stations within a range of 100 to 150 miles. As to any diminished ability to communicate via satellite between satellite coverage areas, the ships will have alternate modes, HF telephony and telex and MF telephony for communications.

IV. DECISION

23. In view of the discussion above, it is clear that the Commission has statutory authority to grant the requested exemptions. The U.S. Navy has stated that the exemptions would have no adverse impact on national security. Further, not only would granting the exemptions not decrease safety for ships at sea, safety may actually be increased because of the superiority of the redundant communications systems that the ships would install if exempted. Therefore, after careful consideration of the requests and responsive pleadings, we will grant the requested exemptions with the conditions set forth in para. 25 *infra* and affirm the exemptions previously granted for the ships GREAT LAND and WESTWARD VENTURE.

24. IT IS THEREFORE ORDERED that the motion to strike filed by Exxon IS DENIED.

25. IT IS FURTHER ORDERED that pursuant to 47 U.S.C. § 352(b), the U.S. cargo ships SANSINENA II, CORNUCOPIA, ATLANTIC SPIRIT, BAYAMON, BORINQUEN, CAGUAS, FORTALEZA, PONCE, PUERTO RICO, SAN JUAN, MOBILE MERIDIAN, SYOSSET, EXXON HOUSTON, EXXON NEW ORLEANS and EXXON PHILADELPHIA ARE EXEMPTED from the radiotelegraph requirements of 47 U.S.C. Title III, Part II and the U.S. cargo ships OVERSEAS JUNEAU, OVERSEAS BOSTON, BROOKS RANGE, THOMPSON PASS, and MOBILE ARCTIC ARE EXEMPTED from the radiotelegraph requirements of 47 U.S.C. Title III, Part II and of Chapter IV of the Safety Convention for an indefinite period when navigated on voyages not more than 150 nautical miles from the nearest land. Each ship's exemption is subject to the following conditions:

a. the ship must have a radiotelephone installation that complies with Subpart R of Part 80 of the Commission's Rules, 47 C.F.R. Part 80, Subpart R;

b. in addition to the main power source the ship must have an emergency power source meeting all applicable rules and regulations of the U.S. Coast Guard, and a reserve power source that complies with 47 C.F.R. § 80.860;

c. the ship must have a satellite ship earth station providing both voice and telex;

d. the ship must have narrow-band direct-printing equipment including SITOR;

e. the ship must have a HF single sideband radiotelephone with voice channels capable of operating on the frequencies listed in 47 C.F.R. § 80.369(b) for distress and safety communications and at least four of the AMVER HF duplex channels;

f. the ship must have a separate 2182 kHz radiotelephone distress frequency watch receiver and a radiotelephone alarm signal generator;

g. the ship must have at least two VHF transceivers;

h. the ship must have a 500 kHz auto alarm receiver and the capability of relaying the distress messages received to shore via one of the systems listed above;

i. the ship must participate in the AMVER system when on voyages of more than 24 hours;

j. the ship, while at sea, must have the capability to operate and maintain all the ship systems used for distress and safety in accordance with 47 C.F.R. §§ 80.159(c) and 80.169;

k. all equipment listed in c., d., and h. above must be capable of being powered by the main and emergency power sources;

l. all equipment listed in e., f., and g. above must be capable of being powered by the main, emergency, and reserve power sources;

m. the ship must maintain a continuous watch on 2182 kHz and 156.8 MHz when navigated;

n. the ship must have a current cargo ship Safety Certificate issued by the Commission; and

o. all of the conditions on which the exemption is granted remain the same.

26. IT IS FURTHER ORDERED that the request filed by ROU/ARA to rescind the exemptions granted to IOM for the U.S. cargo ships GREAT LAND and WESTWARD VENTURE IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. McNamara
Chief, Special Services Division
Private Radio Bureau

FOOTNOTES

[1] An unsigned document which constituted part of the Opposition ultimately filed and served on the parties requesting the exemptions was brought to the Commission staff on or about December 24, 1987. This document, which was not signed as required by 47 C.F.R. § 1.52, was not filed with the Commission pursuant to 47 C.F.R. § 1.4 nor served on the parties pursuant to § 1.47. The properly signed and served Opposition was filed on January 14, 1988.

[2] The ROU and ARA are labor organizations that represent radio officers on board U.S. flag ships.

[3] Section 352(b) of the Communications Act allows the Commission to grant exemptions. *See* paragraph 6.

[4] For the purposes of the Communications Act and Safety Convention ships are classified either as passenger ships or cargo ships. *See* 47 U.S.C. § 153(w) and Chapter I, Regulation 2(f) and (g) of the Safety Convention.

[5] We provided Admiral Layman's June 3 letter to the parties to this proceeding.

[6] The GMDSS is an improved distress system, using modern technology, developed over a period of many years in the IMO for ships subject to the Safety Convention. It may also be used by ships not subject to the Safety Convention. ROU/ARA have a special concern with the operator-maintainerissue, which is associated with employment of dedicated radio officers. They have articulated their concern in the IMO and in the International TelecommunicationUnion (ITU) as well.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

EXCHANGE CARRIER ASSOCIATION, INC.
Tariff F.C.C. No. 1

Transmittal No. 290

ORDER

Adopted: April 28, 1988; **Released: May 2, 1988**

By the Chief, Common Carrier Bureau:

1. On March 15, 1988, the National Exchange Carrier Association (NECA) filed the above-referenced transmittal, which adds tariff language providing for rules and procedures governing the disconnection of jointly provided access service. The tariff is scheduled to take effect April 29, 1988.

2. On March 30, 1988, MCI Telecommunications Corporation (MCI) filed a petition for clarification requesting that NECA address combined-use access service situations in which disconnection may be imposed because a customer has paid the intrastate portion of its account, but has not paid the interstate portion. MCI is concerned that Transmittal No. 290 may allow the discontinuance of service in a case in which there is a dispute over an interstate account.

3. NECA filed a reply on April 12, 1988, stating that Transmittal No. 290 does not change the rules governing the circumstances under which a telephone company may discontinue a customer's service, but rather how it may do so. NECA maintains that Transmittal NO. 290 does not affect the existing provisions on this subject.

4. The Commission's Rules do not authorize the filing of such a petition for clarification. The petition therefore should be dismissed as an unauthorized pleading.

5. IT IS THEREFORE ORDERED that the petition for clarification filed by MCI Telecommunications Corporation in response to Exchange carrier Association Tariff F.C.C. No. 1, Transmittal No. 290, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Revisions to Tariff F.C.C. Nos. 1, 2, 4, 7, 9, 11, 12, and 14

Transmittal Nos. 1129, 1175, and 1246

ORDER

Adopted: June 17, 1988; Released: June 20, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On February 9, 1988, AT&T Communications (AT&T) filed Transmittal No. 1129 to comply with the Commission's requirement that tariffs complying with Comparably Efficient Interconnection (CEI) requirements be effective before a carrier may offer an enhanced service.[1] This transmittal was revised by Transmittal No. 1175, filed on April 1, 1988. Transmittal No. 1175 modified language contained in Transmittal No. 1129 and also added language, including several definitional changes. MCI Telecommunications Corp. (MCI) and the Independent Data Communications Manufacturers' Association, Inc. (IDCMA) filed petitions to reject or to suspend and investigate both of these transmittals.[2] AT&T replied to these petitions.[3]

2. On June 3, 1988, AT&T filed Transmittal No. 1246, to revise Transmittal 1175 further. MCI and IDCMA submitted letters indicating that they would not oppose this transmittal.[4] The three transmittals at issue here are all scheduled to become effective on June 22, 1988.

3. By Transmittal 1129, AT&T proposed to establish a central office connection rate element to enable the physical interconnection at an AT&T central office between AT&T's tariffed services and its own enhanced service equipment. This physical interconnection would provide the AT&T enhanced service, "Transaction Services."[5] Petitioners claimed that the language of Transmittal 1129 would enable, at AT&T's discretion, the physical interconnection of non-AT&T, customer-owned equipment at an AT&T Central Office, *i.e.*, discriminatory collocation of customer-owned equipment. The language primarily at issue specified that the Transaction Services rate element would permit the interconnection at an AT&T central office of AT&T's tariffed services with other AT&T services, including AT&T enhanced services, or *"with customer-owned equipment."* (emphasis added). *See , e. g.*, AT&T Communications, Tariff F.C.C. No. 9, Transmittal No. 1129, Section 3.3.2.

4. In Transmittal 1175, AT&T revised several definitions proposed in Transmittal 1129. Those revisions, however, further suggested to petitioners that customer-owned equipment might still, at AT&T's discretion, be physically located at an AT&T site. This suggestion was created principally by AT&T's revision of the term "Customer Premises" to mean "a Customer-*designated* premises, which may include that portion of an AT&T premises which is not an AT&T Central Office." (emphasis added). *See, e.g.*, AT&T Communications, Tariff F.C.C. No. 9, Transmittal No. 1175, Section 2.10.

5. AT&T, in Transmittal 1246, has now removed the specific language in its definitions which petitioners found objectionable. Thus, what remains before the Bureau is AT&T's establishment of its central office connection rate element, which allows AT&T to offer its enhanced service. No petitions were filed against this aspect of the transmittal.

6. The Common Carrier Bureau has reviewed AT&T's Transmittal Nos. 1129, 1175, and 1246, as well as the petitions and letters of MCI and IDCMA and AT&T's replies. In view of the revisions made by AT&T, we do not find AT&T's transmittals to be patently unlawful so as to require rejection nor do we find that an investigation is warranted at this time.

7. Accordingly, IT IS ORDERED that the petitions to reject or to suspend and investigate filed against AT&T Communications Tariff F.C.C. Nos. 1, 2, 4, 7, 9, 11, 12, and 14, Transmittal Nos. 1129 and 1175 filed by MCI Telecommunications Corp. and the Independent Data Communications Manufacturers Association, Inc., ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Third Computer Inquiry, 104 FCC 2d 958, 1055 (1986). *See also* AT&T Comparably Efficient Interconnection Plan for Transaction Services, Memorandum Opinion and Order, DA 88-671, released May 11, 1988.

[2] MCI Petition To Reject or, in the Alternative, To Suspend and Investigate, AT&T Transmittal No. 1129, filed Feb. 24, 1988; MCI Petition To Reject, AT&T Transmittal No. 1175, filed Apr. 18, 1988; IDCMA Petition To Reject or, in the Alternative, To Suspend and Investigate, AT&T Transmittal No. 1129, filed Feb. 24, 1988; IDCMA Petition To Suspend and Investigate, AT&T Transmittal No. 1175, filed Apr. 18, 1988.

[3] Reply of American Telephone and Telegraph Company, AT&T Transmittal No. 1129, filed Mar. 7, 1988; Reply of American Telephone and Telegraph Company, AT&T Transmittal No. 1175, filed Apr. 28, 1988.

[4] MCI Letter to Chief, Common Carrier Bureau, June 9, 1988; IDCMA Letter to Acting Secretary, Federal Communications Commission, June 10, 1988.

[5] "Transaction Services" is an enhanced service that allows on-line, point of sale communications between a merchant's sales terminal and banks or other financial database services.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-579

In the Matter of

Access Billing Requirements
for Joint Service Provision

ORDER

Adopted: June 20, 1988; Released: June 22, 1988

By the Chief, Common Carrier Bureau:

1. On June 6, 1988, the Common Carrier Bureau released an Order designating issues for investigation in the above-captioned proceeding.[1] On June 16, 1988, ALLTEL Illinois, Inc. (Alltel) filed a motion for extension of time to postpone the filing date for the direct case from June 27, 1988, to July 27, 1988.

2. Alltel states that the 21-day period set out in the *Designation Order* is insufficient because Alltel is a small local exchange carrier with inadequate resources to prepare a direct case within the allotted time. It states that, despite its best efforts, the data collection and analysis process is incomplete. Alltel estimates that it can prepare its direct case by July 27, 1988, however, and states that a grant of extension of time until that date would be in the public interest.

3. We are unpersuaded by Alltel's statements. Our *December 22 Order* made extremely clear, if previous Orders had not, the Commission's and the Bureau's intentions and requirements regarding meet point billing tariff revisions.[2] We find no validity to Alltel's contention regarding the insufficiency of the 21-day direct case filing period, since the local exchange carriers have been on notice for at least six months that these filings would be required. We are therefore denying Alltel's motion for extension of time.

4. Accordingly, IT IS ORDERED that the motion for extension of time filed by ALLTEL Illinois, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Access Billing Requirements for Joint Service Provision, Order Designating Issues for Investigation, CC Docket No. 87-579, DA 88-812, released June 6, 1988 (*Designation Order*).

[2] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 87-579, Memorandum Opinion and Order, 3 FCC Rcd 13 (1987) (*December 22 Order*). *See also* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, 97 FCC 2d 1082, 1283 (1984); Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, 2 FCC Rcd 4518 (1987) and Erratum, CC Docket No. 86-104, 2 FCC Rcd 4731 (1987). The *December 22 Order*, stating that "it appears that numerous carriers have disregarded or misunderstood the Commission's and this Bureau's pronouncements on meet point billing tariff revisions," *id.* at para. 26, stated that tariffs must be revised to include: references to industry standards; justification and support for selection of the default option; clarification of termination charges, with no charges to be made by intermediate (non-terminating) carriers; provision for 30 days' notice of initiation of, or change in, meet point billing arrangements; and use of billing percentages rather than interconnection points. *Id.* at paras. 26-42. That Order stated that, while the tariff submissions received by the Commission in the October 1987 filing did not meet these requirements, they would be accepted provisionally, in order to allow continuation of service, but that "we will provide a period thereafter . . . during which more extensive modifications may be made." *Id.* at para. 43. The *Designation Order*, released June 6, 1988, expanded upon these requirements, and established the filing period.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-579

In the Matter of

Access Billing Requirements
for Joint Service Provision

ORDER

Adopted: June 20, 1988; Released: June 22, 1988

By the Chief, Common Carrier Bureau:

1. On June 6, 1988, the Common Carrier Bureau released an Order designating issues for investigation in the above-captioned proceeding.[1] On June 10, 1988, the National Exchange Carrier Association, Inc. (NECA) filed a petition for waiver of certain requirements set forth in the *Designation Order*. In this Order we conditionally grant NECA's petition.

2. NECA specifically requests waiver of the default option justification requirements listed in paragraphs 7 and 8 of the *Designation Order* for each local exchange carrier (LEC). NECA notes that the membership in its traffic sensitive pool is currently approximately 1200 small LECs, so that compliance with the requirements set forth in the *Designation Order*, and within that Order's timeframe, is impossible. NECA proposes as an alternative that it will provide this information to the extent possible based on a survey of as many of its traffic sensitive tariff participants as is practical within the established time constraints.

3. While we are less than satisfied with the degree of explanation offered by NECA in its proposed alternative, we are cognizant of the problems engendered by the large number of LECs within NECA's membership, and are accordingly inclined to allow for some sort of alternative to the requirements set forth in the Order. It is unclear to us what kind of survey NECA proposes to make. Specifically, it is unclear how numerous or how representative its respondents might be, and what sort of direct case NECA will file -- whether several representative direct cases, or an "averaged" response, or some other form of filing.

4. Nonetheless, we will allow NECA some flexibility in this regard, in view of its unique situation. Our grant of NECA's waiver is, however, provisional. We may request more information or its presentation in a different format than NECA provides, and it is possible that we would ultimately require NECA to make the more extensive filings discussed in the *Designation Order* if we determine that the materials filed in NECA's direct case are not sufficient to enable us to conduct our review and resolve the issues in this proceeding.

5. Accordingly, IT IS ORDERED that the petition for waiver of the National Exchange Carrier Association, Inc., IS PROVISIONALLY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] Access Billing Requirements for Joint Service Provision, Order Designating Issues for Investigation, CC Docket No. 87-579, DA 88-812, released June 6, 1988 (*Designation* Order).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1145

LETTER

May 23, 1988

CINCINNATI BELL
TELEPHONE COMPANY
c/o David C. Olson
Frost & Jacobs
2500 Central Trust Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182
Re: Refund of Inside Wiring Charges

Dear Mr. Olson:

This letter is in response to your June 3, 1987, letter to Mr. Daniel Grosh of the Tariff Division requesting clarification of paragraph 29 and footnote 34 of the Commission's Order in CC Docket No. 83-1145, Investigation of Access and Divestiture Related Tariffs.[1] As you are aware, MCI Telecommunications Corporation (MCI) has filed an opposition to your request for clarification.

We understand from your letter that Cincinnati Bell intended to comply with the Commission's directive to provide refunds to access customers who had filed for refunds of inside wiring charges prior to August 31, 1986. You acknowledge that MCI filed for a refund in a timely fashion. You assert that while a petition to vacate the refund requirement was pending, Cincinnati Bell was revising its mechanized billing program so that it could pay the refunds by February 1, 1987, in order to comply with the Commission's refund requirement. Finally, you interpret the *December1986 Order* as directing Cincinnati Bell "to cease processing of any refunds not already paid."

In its opposition, MCI relies on footnote 34 of the *December 1986 Order* in which the Commission states that it would not require the local exchange carriers (LECs) "to adjust for amounts already refunded or paid to customers." It believes that the Commission assumed that the LECs had already paid refunds for which their customers had submitted requests. MCI states that it had complied with the reporting requirements of that Order, and claims that Cincinnati Bell should have paid the refund by December 1, 1986. MCI concludes by asserting that that paragraph 29 of the *December 1986 Order* applies to inside wire rate recovery on a prospective basis only.

The Commission resolved the question of inside wiring charge refunds in its *December 1986 Order* by vacating the refund requirement and allowing LECs to charge all special access users for the costs of inside wiring. 2 FCC Rcd at 342. The Commission emphasized that its decision to vacate portions of the *Inside Wiring Order* [2] applied to pending requests for refunds. *Id.* The Commission noted that to require the LECs to respond to requests for refunds already on file would substantially defeat the purpose of its rescission of the refund requirement, and could create customer confusion and dissatisfaction.

We have reviewed your letter, MCI's opposition, and the Orders that form the basis for both parties' contentions. We disagree with MCI's interpretation of footnote 34 in the *December 1986 Order*. Our interpretation of that footnote and paragraph 29 of that Order leaves little doubt that the Commission intended to leave the refund situation as it stood on the date the Order was released. Therefore, we conclude that Cincinnati Bell need not refund any charges to MCI for inside wiring. This view, of course, represents only an informal staff opinion, not a final decision by the Bureau or the Commission.

Sincerely,

John Cimko, Jr.
Chief, Tariff Division
Common Carrier Bureau

FOOTNOTES

[1] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, 2 FCC Rcd 339 (1986) (*December 1986 Order*).

[2] Investigation of Access and Divestiture Related Tariffs, 102 FCC 2d 1007, 1037-39 (1985) (Inside Wiring Order).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE OFFSHORE TELEPHONE COMPANY

Request To Participate in the National Exchange Carrier Association, Inc.

MEMORANDUM OPINION AND ORDER

Adopted: June 9, 1988; Released: July 7, 1988

By the Commission: Commissioner Dennis concurring and issuing a statement at a later date.

I. INTRODUCTION

1. We initiated this proceeding to examine a request by The Offshore Telephone Company (OTC) to join the National Exchange Carrier Association Inc. (NECA) and to participate in traffic sensitive (TS) and non-traffic sensitive (NTS) pools administered by NECA on behalf of its member local exchange companies. As further explained below, we find that OTC does not provide local exchange telephone service, a requisite for NECA membership.

II. HISTORY OF PROCEEDING

2. On March 4, 1966, OTC's predecessor, Gulf Coast Telephone Company (Gulf Coast), was authorized under Section 214 of the Communications Act, 47 U.S.C. § 214, to provide common carrier communications service in the Gulf of Mexico. *See Gulf Coast Telephone Company*, 2 FCC 2d 614 (1966) (*1966 Order*). The *1966 Order* authorized Gulf Coast to construct cable to provide telephone, telegraph and telemetry communications between oil and gas drilling platforms and rigs in the Gulf of Mexico, on the one hand, and points within the state of Louisiana, on the other hand. The other Commission authorizations formerly held by Gulf Coast included a cable landing license and authorizations to provide service under Title III of the Act, 47 U.S.C. Title III. In 1969, Gulf Coast filed for bankruptcy. OTC (a wholly-owned subsidiary of Data Com Industries,[1] which was originally called the Louisiana Offshore Telephone Company) purchased Gulf Coast's transmission facilities. Subsequently, this Commission's Common Carrier Bureau issued an Order approving the transfer of Gulf Coast's operating licenses and Section 214 authority to OTC. *See* Order and Certificate of the Chief, Common Carrier Bureau, Mimeo No. 50227, released June 4, 1970.

3. Currently, OTC offers service to a group of oil and gas companies located in the Gulf of Mexico pursuant to end-on-end rate arrangements[2] with carriers that provide interconnection to the local and national telephone networks. OTC's request to participate in NECA is part of a lengthy series of proceedings before this Commission concerning these rate arrangements. In a complaint filed December 28, 1976, OTC claimed that, by their refusal to include OTC in toll settlement arrangements, [3] South Central Bell Telephone Company (SCB) and the American Telephone and Telegraph Company (AT&T) unlawfully discriminated against OTC in a manner proscribed by Section 202(a) of the Communications Act, 47 U.S.C. §202(a).[4] OTC requested this Commission, pursuant to Section 201(a) of the Communications Act,[5] to direct SCB and AT&T to include OTC in these toll settlement arrangements. OTC later amended its complaint to include a request for damages based upon its claim for past discrimination against SCB and AT&T. This Commission assigned OTC's claim for prospective relief to an Administrative Law Judge (ALJ) for a ruling on the evidence, *Offshore Telephone Company*, 66 FCC 2d 184 (1977), and deferred OTC's retrospective claim for damages pending the ALJ's resolution of the Section 201(a) issues. *Offshore Telephone Company*, 68 FCC 2d 63, 65 (1978).

4. In December 1980, the ALJ ruled that OTC had failed to demonstrate that the public interest warranted its inclusion in toll sharing. Accordingly, the ALJ denied OTC's request that AT&T and SCB be required to include OTC in toll sharing arrangements. *Offshore Telephone Company*, 97 FCC 2d 392 (1980) (*Initial Decision*). The ALJ's decision was affirmed by this Commission. *Offshore Telephone Company*, 97 FCC 2d 377 (1983) (*Commission Decision*). Subsequently, however, under the Bell System divestiture, all joint service arrangements among the Bell System companies and Independents based on division of revenues and settlements were terminated. Consequently, the United States Court of Appeals for the District of Columbia Circuit vacated the *Commission Decision* and remanded and ordered this Commission to dismiss as moot the proceedings related to OTC's request to be included in toll sharing arrangements. *Offshore Telephone Company v. FCC*, No. 83-2055 (D.C. Cir. Sept. 21, 1984). Accordingly, we dismissed OTC's Section 201(a) claims and directed OTC to file pleadings concerning its discrimination allegations based on Section 202(a). *Offshore Telephone Company*, Mimeo No. 4282 (released May 2, 1985).

5. On May 31, 1985, OTC filed a petition before the United States Court of Appeals for the District of Columbia Circuit, seeking an order, "in the nature of a writ of mandamus," directing this Commission to conduct trial-type hearings regarding OTC's Section 202(a) claim. OTC requested this Commission to defer the pleading schedule relating to its complaint pending the Court's ruling on its petition for a writ of mandamus. The Court denied OTC's petition. *Offshore Telephone Company v. FCC*, No. 85-1319 (D.C. Cir. June 19, 1985). OTC filed several petitions before this Commission requesting extensions of time, and finally filed a brief under protest on July 31, 1985. Between July 1985 and September 1986, a voluminous record consisting of briefs, responsive pleadings, factual stipulations, witness statements and additional evidence, was compiled in the complaint proceeding. The Bureau determined that the record did not demonstrate unlawful discrimination against OTC. *Offshore Telephone Co. v. South Central Bell Telephone Co., et al.*, 2 FCC Rcd 4546, 4557 (1987), *appl. for review pending*.

III. OTC'S REQUEST TO JOIN NECA

6. On January 24, 1986, OTC filed a second petition for writ of mandamus against this Commission requesting the United States Court of Appeals for the District of Columbia Circuit to direct this Commission to determine whether OTC is eligible to join NECA[6] and to resolve OTC's pending complaint against AT&T and SCB. The Court of Appeals held oral argument on OTC's mandamus petition on January 30, 1987. On February 19, 1987, the Court denied OTC's petition and stated that this Commission "has not engaged in delay so unreasonable as to justify directions from the judiciary." *Offshore Telephone Co. v. FCC*, 811 F.2d 676 (D.C. Cir. February 19, 1987) (table).

7. After OTC filed its mandamus petition, by letter dated October 15, 1986, the Common Carrier Bureau's Tariff Division initiated this proceeding to determine OTC's status with respect to NECA (Bureau Letter), 1 FCC Rcd 232 (1986). The letter stated that the Bureau would construe as a formal request to participate in NECA various letters and pleadings filed by OTC in its complaint proceeding. Also by this letter, the Bureau directed OTC to respond to questions designed to elicit information that would indicate whether OTC should be allowed to participate in NECA. OTC filed a letter on October 23, 1986 (October 23 Letter) seeking clarification of the Bureau Letter, a response to the Bureau's questions on November 14, 1986 (Response), and a supplementary response on December 15, 1986 (Supplement). On January 15, 1987, comments were filed by AT&T; the Ameritech Operating Companies (Ameritech); the Bell Atlantic Telephone Companies (Bell Atlantic); BellSouth Corporation (BellSouth); and the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West). Five oil producing companies[7] that subscribe to OTC's service submitted letters supporting OTC's request. On January 29, 1987, OTC filed a reply (Reply).

IV. OTC'S FACILITIES AND SERVICES

8. As stated above, OTC is engaged in the business of providing communications services to industrial subscribers located in the Gulf of Mexico. According to OTC, Gulf Coast initially used cable facilities to provide communications services in the Gulf. OTC states, however, that technologies improved over time, and eventually radio service became more economical and reliable than cable. Accordingly, OTC transferred most service to radio facilities. OTC explains that currently its microwave radio network covers 526.7 miles. OTC expects to increase this network by 78.7 miles.[8]

9. OTC presently provides telephone services to subscriber stations established on manned and unmanned oil and gas producing platforms and rigs.[9] barges, and other maritime vessels located in the Gulf of Mexico. OTC states that presently it serves 62 subscriber stations including rigs and platforms that frequently are moved throughout the Gulf.[10] Most of these subscriber stations are located beyond Louisiana's three-mile jurisdictional limit. According to OTC, these structures are used by its subscribers "an average number of days ranging from 29 to 324 days during the period 1984 to 1986, with a median and a mode of 107."[11] OTC states that between 1984 and 1986, it provided 1,125 main telephone stations.[12] OTC uses Offshore Radio Telecommunications Service (ORTS) and temporary rural radio stations to link its subscribers to land-based connecting carriers. In addition, OTC maintains a submarine coaxial cable system that may be used as a backup to route calls to SCB's switch in Morgan City, Louisiana. Once delivered to land-based carriers in Louisiana, calls originating on OTC's facilities are switched by SCB at Morgan City, by Cameron Telephone Company (Cameron) at Rutherford Beach, Louisiana or by Lafourche Telephone Company (Lafourche) at Grand Isle, Louisiana.[13] OTC describes this transmission path as follows:

> At the subscriber's premises, a network interface (typically an RJ-11-C jack) is provided, to which terminating equipment (i.e., customer premises equipment, such as a telephone hand set) is attached. From this point, a "transmission path" is created either through a radio link which connects to Offshore's main transmission sites, or directly via multiplexers and OTC transmission links routed toward the shore. Once at the shore, OTC's facilities are interconnected to those of the adjacent carrier, whether these facilities are connected to the public switched network or to private (i.e., off-network) systems.[14]

10. In its interstate tariff, OTC describes several services including measured rate telephone service, radio telephone service, MTS, foreign exchange (FX) service, private line service[15] and dedicated voice/data service.[16] OTC discontinued its measured rate telephone service in 1984. OTC's interstate tariff described this service as service that originates or terminates at telephones located at exchange stations designated by OTC as measured rate telephones. Calls from measured rate telephones were handled manually by OTC employees at OTC's switchboard in Morgan City and were billed to a credit card or to the called party at the rate of4.50 for the first three minutes or fraction thereof, and1.50 for each additional minute to connect to landline switching facilities.

11. According to OTC's interstate tariff, service to subscribers not connected directly to OTC's wire facilities is provided by use of radio telephone channels that link temporary or fixed remote radio stations and facilities OTC designates as fixed central office stations.[17] The monthly service charge for radio telephone service is900. Callers incur additional charges for service that is transmitted beyond OTC's facilities. OTC bills customers3,000 to install radio station equipment and1,500 to remove the equipment. MTS calls that originate on facilities provided by OTC are "handled through the facilities of the telephone company and . . . directed to inland destinations outside of the participating carrier's local inland exchange area."[18] For fixed rate MTS calls, OTC's subscribers pay OTC's fixed monthly basic exchange charge of456 for OTC's portion of the service. In addition, OTC recoups from its subscribers the business exchange charge of41.00 per line assessed by SCB on each business exchange line ordered by OTC on behalf of its subscribers, and any applicable message unit charges that may be assessed by SCB.

12. OTC describes its FX charge as a recurring monthly charge that applies "in instances where a subscriber desires 'service connection' from his premises located in an established Exchange Area to the Central Office contained in a Division other than that to which the Exchange is normally connected."[19] This service is billed at a rate of

13.00 per channel per statute mile computed on an airline mileage basis. Rates for dedicated voice/data service are identical to those that apply to FX service (*i.e.*, 13.00 per channel per statute mile per month).

13. While OTC is authorized by this Commission to provide interexchange service in accord with its federal tariff, OTC Tariff F.C.C. No. 2, OTC is not authorized by any state to provide intrastate communications service. The Louisiana Public Service Commission (Louisiana PSC) has stated that OTC has a tariff on file in Louisiana, but that it is not authorized to provide service within the state's territorial boundaries. The Louisiana PSC explains that:

> In Louisiana, the Public Service Commission does not issue certificates of public convenience and necessity to telephone companies. Telephone companies are franchised by municipalities or local governing authorities and thus becoming [sic] a public utility are required to file tariffs and submit to regulation by the Louisiana Public Service Commission . . . . There are no indications or records on file with the Public Service Commission filed by Offshore Telephone Company which reflect the filing of territorial service maps or the obtaining of franchises from local governing authorities to provide local exchange land line telephone service. Additionally, Offshore Telephone Company has not requested nor obtained authority from the Louisiana Public Service Commission to provide intralata interexchange or long distance telephone service within the LATA in which South Central Bell and Lafourche Telephone Company provide local exchange services.[20]

V. PLEADINGS

A. *OTCs Response*

14. OTC's basic contention is that it provides telephone service to people who use this service for both business and personal reasons, and that there exists a "philosophy of equality of treatment of the rate paying public" which "has been applied universally, except for the rate paying public using an OTC telephone." OTC Response, Sec. 11, p 2. It claims that there should not be different toll rates for OTC's customers than for other customers. In challenging what it considers the unfair treatment of OTC customers, it asserts that users of office telephones in Rochester, N.Y. use their telephones with no rate differential for business or personal calls; that callers at Disney World pay the same rate whether they are employees or tourists; that Indians residing in the Grand Canyon pay no higher rate in spite of the "high cost per station;" and that people living in bush communities in Alaska have telephone service at no different rate "even though the nature of these telephones was such they could not be used for local exchange calls." *Id.* By analogy, OTC thus argues that the fact that the telephone system is owned by a business entity, or incurred high costs per station, or could not be used for local calls, is not a basis for rate differences or for excluding the telephone company from NECA membership. OTC also claims that the current arrangements are not fair to its customers, who generate "vast sums of toll revenue" which is not available to lower the subscribers' monthly rates.

B. *Comments on the OTC Response*

15. In their responses to OTC's submissions, AT&T, Ameritech, Bell Atlantic and BellSouth all argue that OTC has not demonstrated that it provides exchange access service or that it should participate in the NECA pooling process. AT&T observes that, in other proceedings, OTC has demonstrated that it is not in the business of providing exchange access service.[21] AT&T remarks that OTC's service is primarily end-link in nature, that it originates almost exclusively from temporary maritime facilities, and thus it is limited to a narrow body of industrial maritime users. As such, AT&T argues, OTC's service is similar to that provided by maritime carriers. AT&T notes that OTC's service is "just the opposite from that generally experienced by local exchange carriers, 92% of whose calling was between customers within the same local calling area."[22] AT&T argues that OTC's low density subscriber area adds to OTC's high costs. These factors, AT&T argues, distinguish OTC from local exchange carriers.[23] AT&T concludes that OTC incorrectly claims that high cost, end-link service providers are local exchange carriers. Moreover, AT&T adds, OTC has failed to advance any policy considerations or public interest objectives that support its request to participate in NECA.[24]

16. While Ameritech offers no criteria for NECA eligibility, it argues that OTC has failed to present facts, legal arguments or policy considerations that justify its participation in NECA. Ameritech states that, in 1983, OTC failed to demonstrate that its participation in the division of revenues process was warranted. Ameritech states further that OTC's responses to this Commission's questions indicate that nothing has changed since 1983. Consequently, Ameritech continues, OTC is not eligible to participate in the NECA pooling process.[25] Ameritech notes that, in 1984, OTC did not generate local revenues and that, with the exception of one intrastate customer, OTC's service presently is interstate in nature. According to Ameritech, OTC provides "something akin to resold exchange service" to its one intrastate subscriber.[26] Participation by resold exchange service providers in the NECA pooling process is inconsistent with the purposes of NECA, Ameritech concludes.

17. Bell Atlantic argues that OTC is not certified by the Louisiana PSC as a provider of local exchange service. It notes further that OTC's filings do not indicate that the Louisiana PSC has issued a certificate of public convenience and necessity authorizing OTC to provide local service.[27] Bell Atlantic observes that OTC's customers are business users, that much of OTC's service involves dedicated private lines, that many of its locations are temporary, and that OTC performs no local switching. Consequently, Bell Atlantic maintains, OTC's business does not resemble traditional local exchange service, and OTC fails to qualify as a local exchange carrier within the meaning of Section 3(r) of the Communications Act, 47 U.S.C. § 153(r).

18. US West contends that NECA membership should be limited to dominant telephone companies that provide fixed service to residential subscribers. It argues that, in view of the competition that exists in the Gulf of Mexico, OTC presently is not a dominant telecommunications provider in the region.[28] Moreover, US West adds, OTC does not provide basic residential service, but instead provides private line interstate service. US West contends that OTC is mistaken in its claim that it is the only telephone company that is not permitted to participate in NECA.

OTC is similar to cellular carriers, radio common carriers and shared tenant service (STS) providers which do not participate in NECA's pooling arrangements, US West argues.[29] US West concludes that the addition of these types of telephone companies in the NECA pooling process would undermine this Commission's access plan. It observes that if OTC were permitted to join NECA's mandatory carrier common line pool and high cost fund, all telephone company subscribers would be forced to subsidize OTC's oil and gas company subscribers.[30]

19. The five OTC customers who filed comments give nearly identical reasons for supporting OTC's request to participate in NECA: (1) OTC "could get some share of the tremendous amount of long distance revenues our company generates using [OTC] phones," (2) OTC "could use this revenue to lower our monthly charges for basic telephone service," and (3) the oil company "would have the benefit of paying the same rate for a long distance call using [OTC's] telephone system as we do using any other telephone company in the United States that we use to place similar calls."[31]

C. *OTC Reply*

20. In response to these arguments, OTC argues that the status of its subscribers as business or residential telephone users is not determinative of whether it should participate in NECA.[32] It states that it is not a private telephone provider, a radio common carrier, a specialized common carrier or an interexchange carrier. Instead, OTC characterizes itself as a regulated local exchange carrier that uses facilities it owns or leases to provide local service to a community of interest located in the Gulf of Mexico. As such, OTC continues, it should be permitted to join NECA and participate in NECA's pools. OTC observes that this Commission's rate integration policies protect ratepayers located in regions with unique geographic and cost characteristics from excessive rates for telephone service. OTC also argues that, by issuing a public notice announcing OTC as a participant in a lottery conducted to award a cellular radio frequency to a tentative selectee chosen from a group of wireline local exchange carriers, this Commission has "classified OTC as a domestic wireline carrier and one equivalent to SCB."[33] OTC claims that our rate policies and our treatment of OTC as a wireline local exchange carrier in the cellular lottery proceedings[34] supports its request to join NECA.

VI. DISCUSSION

21. In order to understand the substance of OTC's request, a review of past and present compensation mechanisms among telephone companies is necessary. Traditionally, the Bell System compensated non-Bell independent telephone companies for the use of their facilities through settlement contracts. The amount of compensation was based upon costs allocated to the interstate jurisdiction by the Separations Manual. All local companies participated in AT&T's long distance tariffs for the joint provision of services and in the corresponding settlement arrangements. Only traditional local exchange carriers were included in these settlement arrangements, however, and these arrangements applied only for traditional telephone services. Specialized endlink services, such as radiotelephone, maritime, and mobile services, were not included in cost and revenue sharing arrangements, whether or not they were provided by local telephone companies. The decision of the ALJ denying OTC's request to be included in toll sharing, as affirmed by this Commission, was based on the finding that the public interest would not be served by the inclusion of OTC's services within the rate and cost settlement mechanisms developed for traditional exchange and toll services.[35]

22. With the advent of long distance service competition, this Commission embarked on a program to replace settlement arrangements with access tariffs.[36] Under the access program, instead of jointly providing service with AT&T, local companies provide access to all long distance carriers at the same tariffed rates (where equal access is available) and local customers receive long distance services from the long distance carrier of their choice. This program achieves four policy goals, (1) preservation of universal service; (2) elimination of unreasonable discrimination and undue preferences among rates for interstate services; (3) efficient use of the local network; and (4) prevention of uneconomic bypass.[37]

23. In developing this system, this Commission was particularly cognizant of the need to establish effective rules which would assure that local exchange companies would be fairly compensated and which, at the same time, would revise those compensation mechanisms to align rates more closely with costs. To accomplish these tasks, this Commission established NECA and authorized the Association to assume many of the functions formerly handled by AT&T. Accordingly, NECA files interstate access tariffs on behalf of its members, local exhange telephone companies, based upon the pooled costs and revenues of member telephone companies. Each member of the NECA pool charges the same rate, regardless of its actual costs, and each is compensated from pool revenues for its interstate costs.[38]

24. This arrangement provides significant advantages for this Commission and participating local exchange companies. For example, a single administrative staff calculates NECA rates and files tariffs on behalf of all participating companies. NECA also administers programs to assist high cost areas and customers who might otherwise be unable to afford telephone services. The common line (CL) pool as administered by NECA also plays an essential role in achieving more cost-based rates: as carriers shift toward recovering non-traffic-sensitive costs more accurately through per line rates, NECA files corresponding reductions in carrier common line (CCL) rates resulting in lower long distance rates and more efficient use of the switched network.[39]

25. By its request, OTC has asked this Commission to require local exchange companies to participate with OTC in the cost and revenue pools which this Commission established for local exchange telephone companies as a replacement for pre-access settlement arrangements. Although this request presents many of the same considerations as OTC's request for inclusion in these settlement arrangements, this request presents the first occasion upon which to address these questions as they might be affected by the access rules and the principles on which they are based.

26. Under our rules, membership in NECA is "limited to exchange carriers that participate in access charge revenue pools that are administered by the association . . . ."[40] Section 69.601(b) of the rules, 47 C.F.R. § 69.601(b), states that: "[a]ll telephone companies that participate in

the distribution of Carrier Common Line revenues collected by the association shall be deemed to be members of such association."

27. Section 69.601(b) of the rules implicitly requires that NECA members must, at a minimum, be telephone companies. Section 69.601(b) also implies that telephone companies eligible for NECA membership provide the basic exchange service for which the distribution of Carrier Common Line revenues would be justified. Moreover, since membership in the Association is limited to companies that participate in access revenue pools,[41] NECA members must provide access service. Non-access revenues and costs are not included in the pools. Thus, in order to decide whether OTC is eligible for NECA membership we must address several issues. Fundamental to our resolution of this matter are questions concerning whether OTC is a telephone company, whether it provides local exchange service and, whether it provides access service. Factors we shall consider in resolving issues related to OTC's status include the effect of this Commission's prior regulation of OTC as a common carrier, OTC's service and facilities, and OTC's customer and cost characteristics. These issues are addressed separately below.

A. ***Local Exchange and Access Service***

28. As noted by the Bureau, OTC bears the burden of demonstrating that its participation in NECA is warranted. Bureau Letter at 2. Accordingly, in order to demonstrate that it is eligible for NECA membership, OTC must demonstrate that it is similar to the carriers that presently participate in the Association. That is, OTC must demonstrate that it is a telephone exchange company, that it provides local exchange, and that it provides access service.

29. Part 69.2(cc) of this Commission's Rules, 47 C.F.R. § 69.2(cc), defines a telephone company as a "carrier that provides telephone exchange services as defined in Section 3(r) of the Communications Act of 1934." Section 3(r) of the Communications Act, 47 U.S.C. § 153(r), states:

> Telephone exchange service means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge.

30. The United States Court of Appeals for the Fourth Circuit explains that "telephone exchange service" is a "statutory term of art . . . [that] means service within a discrete local exchange system . . . ."[42] This Commission has further described exchange service as "the provision of two-way voice communications between individuals by means of a central switching complex which interconnects all subscribers within a geographic area." *See Domestic Public Radio Service*, 76 FCC 2d 273, 281 (1980); *Midwest Corp.*, 53 FCC 2d 294, 300 (1975).

B. ***Regulatory Treatment of OTC***

31. OTC argues that, in the past, this Commission has allowed OTC to perform some of the same activities as local exchange telephone companies. For example, OTC notes that it was authorized by this Commission to provide resold interstate communications in accord with Section 214 of the Act. OTC remarks in addition that the FCC previously determined that OTC provides service pursuant to its federal tariff which is local exchange service; that it has been included in a wireline cellular lottery,[43] that it is permitted to use rural radio frequencies reserved for wireline carriers,[44] and that it holds licenses for Telephone Maintenance Radio Service frequencies reserved for wireline carriers. Moreover, OTC notes that it has been classified as a dominant carrier in the Gulf of Mexico. OTC reasons, apparently, that this regulatory treatment constitutes a finding by this Commission that it is a local exchange carrier.

32. For the following reasons, we find OTC's arguments unpersuasive. First, OTC's reliance on this Commission's grant of authority under Section 214 to provide resold interstate WATS service is misplaced. Carriers need not be local exchange carriers to receive 214 authorizations. AT&T, for example, an interexchange carrier, must obtain 214 authorizations. In fact, local exchange lines are generally excluded from the application of Section 214.[45] While the *1966 Order* did grant OTC's Section 214 application, and thereby authorized OTC to provide communications service on a common carriage basis, neither the *1966 Order* nor OTC's Section 214 authorization contained an express or implied determination with respect to OTC's status as a local exchange carrier.

33. OTC's claim that dominant competitive carrier status in the Gulf of Mexico is evidence that OTC is a local exchange carrier is also unfounded. OTC's classification as a dominant carrier within the area in which it provides offshore service simply is not relevant to whether it provides local exchange service and access service. Classification of a carrier as dominant or nondominant in a particular market does not determine whether the carrier provides or resells local, toll or interstate services.[46] Upon our review of OTC's facilities application, this Commission granted OTC authorization to resell interstate communications services and characterized OTC as a dominant carrier for these services.[47] This Commission did not, however, make any determination that OTC provides local exchange service.

34. OTC notes that it was selected first in the cellular lottery conducted by this Commission on September 29, 1986 for the Frequency Block B frequencies in the Houma-Thibodaux, Louisiana, metropolitan statistical area (MSA),[48] and argues that its participation in wireline lottery proceedings supports its request to participate in the NECA pools as a local exchange carrier. We disagree. In the lottery selection process, carriers designated themselves as wireline or nonwireline. The Commission did not judge the carrier's qualifications merely by selecting the carrier in the lottery.[49]

35. Further, in an Order released August 3, 1987 by the Mobile Services Division of the Common Carrier Bureau,[50] the Division determined that OTC is unqualified and ineligible to hold the license for the wireline frequency for the Houma-Thibodaux market. Accordingly, OTC's claim that voluntary participation in wireline lotteries is evidence of status as a local exchange carrier is without merit. We also reject OTC's contention that this Commission determined that OTC is a wireline carrier because this Commission permitted it to use radio spectrum allocated for wireline carriers. In fact, no determination was ever made regarding the wireline status of OTC.[51]

36. OTC claims in its Reply that "the FCC determined . . . [t]hat Offshore operates pursuant to an FCC tariff by which it provides, *inter alia*, basic exchange service". OTC Reply at 7. It is unclear whether OTC is claiming that the FCC has determined simply that OTC operates pursuant to an FCC tariff or that the FCC has determined that the service OTC provides under tariff is local exchange service. In any case, OTC does not identify the FCC order or other document in which either possible determination was allegedly made nor are we aware of any such document. As to the former interpretation of OTC's Reply, we agree that OTC has a tariff on file with this Commission. As to the latter interpretation we note that the question of whether the service OTC provides under its tariff constitutes local exchange service is, of course, the precise issue in the instant proceeding. We also note that OTC filed an editorial revision to its tariff which renamed as "local exchange service" the service it had described as "private line service."[52] Merely renaming the service in its tariff does not change the nature of OTC's service offerings, and the fact that the tariff edits were allowed to go into effect does not imply that the Commission accepted a change in the carrier's status.

37. Thus, contrary to OTC's claims, this Commission has not addressed prior to the instant proceeding the question of whether OTC is a local exchange carrier, and none of the Commission's actions represents an implied determination of that status. Indeed, no formal proceedings have ever been conducted to determine OTC's status with respect to local exchange carriage. None of the indicia of exchange carrier status claimed by OTC -- the grant of authority to provide service under Section 214, the provision of interstate service under its this Commission's characterization of OTC as a dominant carrier, the inclusion of OTC in a wireline cellular lottery based on OTC's self-designation as a wireline carrier, or the allocation to OTC of radio spectrum reserved for wireline services -- constitutes a determination that OTC provides exchange access service, that OTC is a local exchange carrier, or that OTC should be permitted to participate in NECA.[53]

C. *OTC's Services and Facilities*

38. We turn next to the question of whether OTC operates a telephone exchange service within the meaning of the Communications Act. As our summary of the record indicates, OTC essentially provides channels linking offshore oil platforms, rigs and vessels to onshore local exchange companies. Microwave radio facilities are largely or entirely used to establish the channels, and all switching is done by the onshore telephone companies which also provide the dial tone and assign telephone numbers in their exchanges to OTC. The platforms, rigs, and vessels can and do move, and the OTC facilities are used almost exclusively to send and receive calls through the onshore telephone exchanges. There is little or no "local", *i.e.*, rig-to-rig calling over OTC's facilities. These characteristics represent a specialized operation designed and operated to serve a particular group of industrial customers and do not constitute a local telephone operation.[54]

39. OTC differs from traditional exchange carriers in other ways as well. For example, OTC is not certified by any state as a provider of basic exchange service within a local exchange area. While OTC notes that it has a tariff on file in Louisiana, the PSC has indicated that this tariff does not authorize OTC to provide local exchange service within an exchange or within Louisiana's regulatory jurisdiction.[55] OTC's state tariff authorizes OTC to serve only a single rig in Louisiana's territorial waters; almost all of OTC's services are provided beyond Louisiana's three-mile jurisdictional limit in the Gulf of Mexico;[56] and OTC does not provide service among subscribers located within a single exchange area. Accordingly, OTC's services and facilities differ substantially from those provided by traditional local exchange carriers.

40. In addition, OTC does not provide exchange switching. Indeed, OTC performs no switching whatsoever via its own facilities. OTC's FX subscribers use facilities that terminate in the exchange areas of the connecting carriers, and are assigned exchange numbers designated to the exchanges served by these connecting carriers. Calls made by OTC's subscribers are routed to the connecting carriers where they are switched and then routed to the dialed party. Moreover, data submitted by OTC indicate that there is little rig-to-rig calling among OTC's subscribers, and that, to the extent that rig-to-rig calls are made, they are made on private lines or radio equipment, or they are transmitted to connecting carrier facilities for switching. While OTC argues that some local exchange carriers that participate in NECA do not perform their own switching, OTC does not identify any such carriers nor are we aware of any.

D. *OTCs Customer Base*

41. The usage patterns of OTC's customers do not resemble those typically served by local exchange carriers. Traditionally, local exchange carriers serve communities that include business and residential users. They offer, first of all, a local calling capability that permits a community of interconnected customers to make calls to one another over a switched network. That defines the exchange. In contrast, OTC's subscribers are a limited group of specialized business customers that use dedicated private lines to make long distance calls to and from offshore rigs and platforms.[57] OTC generated no local service revenues in 1984, the only year for which it submitted data concerning revenues. OTC argues that some NECA members serve exchange areas that do not include residential subscribers.[58] This argument, however, overlooks the fact that these carriers operate within a local exchange and generate local service revenues.

E. *Practical Implications*

42. Our conclusion that OTC is not a local exchange company, and therefore not eligible for NECA membership, is consistent with policy considerations which weigh against its request to participate in NECA. The effect of requiring NECA to permit OTC and similar companies to join the NECA pools would be to require member telephone companies to participate in cost and revenue sharing arrangements with OTC and similar companies.[59] OTC acknowledged the extraordinarily high costs involved in providing services to temporary structures in the Gulf.[60] If OTC were included in the NECA CL pool, all, or a substantial portion, of its costs would be allocated as interstate by the separations process. These costs would include those recovered by end user and carrier common line charges and the common line pool.

43. For multi-line business lines, the interstate end user charge is capped at6 per month per line. Per line costs not recovered by this charge are recovered by the carrier common line charge and assessed to long distance carriers who, in turn, pass along this charge to customers as part

of long distance rates. For OTC, with its high cost per loop, the effect of NECA participation would be that OTC's customers would pay an end user rate of6 per line, assuming all lines would be treated as multi-line business lines. Thus, unless special rule revisions were adopted to address the unique interstate character of OTC's operation, OTC customers would enjoy a substantial rate reduction; costs currently recovered from rates paid by OTC's customers would be passed along into the CCL pool and the resulting NECA rates. The effect of this arrangement would be that almost all of OTC's costs would be paid by the nation's long distance callers generally.

44. We see no public interest considerations which would justify subsidizing the costs of OTC and its customers. By including costs incurred by OTC and other specialized carriers in NECA pools we would impose upon the general body of ratepayers substantial expenses incurred solely for the benefit of specialized users, a result that would disserve the public interest.

VII. CONCLUSION

45. In sum, the data provided by OTC indicate that OTC differs from traditional local exchange carriers with respect to the services it provides, the facilities it employs, the usage patterns of its customers, and the revenues generated therefrom. In light of these characteristics of OTC's service, we find that OTC does not provide local exchange and exchange access service. If anything, OTC's service appears to resemble a form of resold exchange or endlink service similar to that provided by ancillary radiotelephone, maritime, and cellular carriers.[61] Thus, OTC does not provide telephone exchange service within the meaning of Section 3(r) of the Act or Part 69 of the rules, and is not eligible for NECA membership. Accordingly, we deny OTC's request to join NECA and to participate in the TS and NTS pools administered by the Association.

VIII. ORDERING CLAUSE

46. Accordingly, IT IS ORDERED that the request made by the Offshore Telephone Company to join the National Exchange Carrier Association and to participate in the traffic sensitive and non-traffic sensitive pools administered by NECA is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Data Com is wholly-owned by Core Laboratories, Inc., a subsidiary of Litton, Inc.

[2] By "end-on-end rates" we mean that for each call, OTC and the onshore carrier each assess a separate rate reflecting the service each provides. This contrasts with a "joint rate" under which the customer pays a single rate for the call, and the various carriers who participate in the transmission are compensated by a settlement arrangement.

[3] Prior to the divestiture of the Bell System, AT&T, the Bell Operating Companies (BOCs) and some Independent telephone companies participated in toll sharing arrangements called "division of revenues" and "settlements" for the provision of interstate long distance service. Under these arrangements, services including interstate message telephone service (MTS), wide area telecommunications service (WATS) and intercity private line services were provided by AT&T, the BOCs and the Independents in accord with a uniform schedule of rates based on these carriers' average plant costs. Costs and revenues incurred under these arrangements were pooled and distributed to the participating telephone companies in a manner that permitted each company to recover its expenses and a uniform return on plant investment. The Commission's Separations Manual, which is now codified as 47 C.F.R. Part 67, was used to determine each company's interstate investment and expense.

[4] Section 202(a) proscribes, *inter alia*, unjust or unreasonable discrimination in charges, practices, classification, regulation, facilities or services for, or in connection with, like communications service. The statutory provision further provides for forfeitures in the event that a carrier knowingly and unreasonably engages in such discrimination.

[5] Under Section 201(a) of the Act, this Commission is authorized, upon a public interest finding, to require a carrier to establish physical connections with other carriers and to establish through rates and a division of charges. Absent a public interest finding, no carrier is obliged to establish through rates and a division of charges with another carrier. *See United Tel.*, 54 FCC 2d 289, 290 (1975), *aff'd, United Tel. v. FCC*, 459 F.2d 720 (D.C. Cir. 1977).

[6] OTC claimed that it had made an informal application to join the Association and that this Commission had failed to resolve OTC's informal request.

[7] *See* letters dated December 8, 1986 from Marathon Oil Co., Odeco Oil and Gas Co., and Standard Oil Production Co.; letter dated December 10, 1986 from Texaco USA; and letter dated December 14, 1986 from Texaco USA and CNG Producing Co.

[8] OTC Response at 5-6. OTC states that construction costs for a single microwave radio path are17,500, that a duplex radio path costs about 35,000, and that these additional 78.7 miles of radio facilities are under construction or proposed. OTC does not specify, however, when it plans to begin using these planned radio facilities. *Id.* at 5.

[9] Platforms are artificial islands normally designed for up to 40 years' use. Manned platforms are equipped with sleeping quarters, while unmanned platforms are not. Drilling rigs are temporary fixed structures designed to remain at a single location for periods ranging from 3 days to 6 months. OTC states that, on average, a drilling rig remains at a single location for 45 days.

[10] OTC Response at 2. In direct contrast to these data, OTC submitted data in the complaint proceeding that indicate that in 1975 and 1978, the most recent years for which data were compiled, OTC served 2,323 and 2,075 platforms, respectively. *See* Docket No. 21396, Offshore Exhibit at 1-N, p.2 and Trial Staff Exhibit at 7, p.3. Apparently, OTC has either discontinued service to a substantial number of rigs and platforms or has supplied inaccurate or misleading data. In either event, OTC has failed to provide a breakdown of the number of rigs, platforms and vessels it serves in the Gulf, as requested by the Bureau Letter.

[11] OTC Response at 2.

[12] *Id.* at 14.

[13] In response to Question 1(a) of the Bureau Letter, OTC states that it interconnects with only three connecting carriers. OTC Response at 3. OTC provided a separate, different list of connecting carriers and locations, however, in its response to

Question 4 of the Bureau Letter. AT&T observes that this latter, more extensive list of connecting carriers apparently includes carriers with which OTC interconnects through facilities supplied by another telephone company. AT&T Comments at 20.

[14] OTC Response at 1. OTC states that it "does not utilize its own switching equipment in the provision of its communications services because of the nature of the switching arrangements offered by SCB in the Morgan City, Louisiana exchange." *Id.* at 3. In other portions of its response, OTC states that for all calls that originate or terminate on OTC's facilities, switching is performed by connecting carriers. OTC Response at 3, 16.

[15] OTC states that it uses the term "private line" to denote "a single (nonparty) line and the Company's flat monthly basic exchange rate for a telephone connecting to SCB's switch at Morgan City." OTC Response at 24. In its October 23 letter OTC states that its monthly fixed exchange rate for such service is456. October 23 Letter at 3-4.

[16] OTC Tariff F.C.C. No. 2.

[17] OTC's interstate tariff does not define the term "fixed central office station." In Part 22 of the Commission's Rules, however, offshore central stations are defined as "fixed station(s) in the offshore radio service for interconnection with the land telephone system." 47 C.F.R. § 22.2. These facilities form hubs interconnecting OTC facilities on subscribers' offshore drilling sites to OTC's cable.

[18] OTC Tariff F.C.C. No. 2, § H at 28.

[19] *Id.* at 29-30.

[20] Louisiana PSC Letter to Chairman, Federal Communications Commission, at 1-2, dated Jan. 30, 1987. During various times in the past, however, OTC has had a tariff on file in Louisiana authorizing service in the state. OTC's tariff was first accepted for filing by the Louisiana PSC in 1967. According to OTC's testimony, however, OTC implemented service under its state tariff on April 10, 1970, but discontinued this service in 1973. In 1981, OTC asked the Louisiana PSC for authority to reinstate service to a single rig located in the Gulf within Louisiana's territorial waters. Thus, we are unable to determine precisely from the Louisiana PSC's characterization of OTC what that Commission's regulatory treatment of OTC has been.

[21] AT&T Comments at 5-6. In testimony related to the complaint proceeding, AT&T argues that OTC is not a local exchange carrier. AT&T further argues that OTC's own witness affirms that OTC's subscribers had no need for exchange services. *Id.* at 7-8. *See also* Ameritech Comments at 2-3; Bell Atlantic Comments at 1-2. In testimony in the complaint proceeding, Carl Domiano, OTC Vice President, stated that OTC's system was not designed to permit calls between offshore sites and that there was no demand for such service. Instead, he stated, calls between OTC subscribers are routed to adjacent carriers located onshore where they are switched by the adjacent carrier and then routed back offshore to OTC's facilities. *See* Offshore Tel. v. South Central Bell Tel. and AT&T, ENF File No. TS-2-77, Testimony of Carl Domiano, *See also* OTC 1984 Form M, para. 34, p.56; *Offshore Telephone Co.*, 97 FCC 2d 392, 398 (ALJ 1980).

[22] AT&T Comments at 4 n.8. BellSouth argues that OTC is a specialized carrier that provides a communications link at high cost to a single and limited user group of oil producers that operate in the Gulf of Mexico. BellSouth compares OTC's service to ancillary radiotelephone service and notes that such maritime radiotelephone service providers do not participate in NECA pooling arrangements. BellSouth Comments at 1-2.

[23] Apart from its substantive arguments, AT&T argues that OTC has failed to respond adequately to the Bureau's questions. Therefore, AT&T continues, the Bureau is not able to determine the impact of OTC's participation on the NECA pools. AT&T Comments at 17-30. BellSouth agrees that OTC's filings are deficient. It cites OTC's responses to Questions 1, 1(a), 1(c), 3, 4, 5(a), 6(a), 6(c), 7, 8 and 10 as examples of OTC's failure to provide complete or appropriate answers to the Bureau's questions. BellSouth Comments at 4-8.

[24] AT&T Comments at 31.

[25] Ameritech Comments at 2-3.

[26] *Id.* at 3.

[27] Bell Atlantic Comments at 2 n.2.

[28] OTC was classified as a dominant carrier in the Gulf of Mexico in 1982. *See* Offshore Telephone Company, File No. W-P-C-4535, Applications for Section 214 Authorization at 3, 5 (May 12, 1982). This determination of OTC's competitive status was based on competitive conditions that existed in the Gulf in 1982. US West observes, however, that telecommunications service in the Gulf presently is provided competitively by a number of common and private carriers, including Coastal Communications Company and Petroleum Communications, Inc. *See* US West Comments at 3.

[29] *Id.* at 9-10.

[30] US West claims that if OTC were to participate in the NECA pools, up to 75 percent of the costs incurred by OTC subscribers would be paid by the residential and business subscribers of carriers other than OTC. US West argues that this result would impose an unreasonable burden on the ratepaying public and is inconsistent with the purposes of NECA. *Id.* at 6-7, 12-14.

[31] *See* , CNG Letter dated Dec. 4, 1986 at 1; Marathon Letter dated Dec. 8, 1986; Odeco Letter dated Dec. 8, 1986; Standard Oil Letter dated Dec. 8, 1986 at 1; and Texaco USA Letter dated Dec. 10, 1986.

[32] The arguments summarized in this Section appear in OTC's mandamus petition, in its November 14, 1986 response to the Bureau Letter, in its December 15, 1986 supplementary response, and in its complaint.

[33] OTC Mandamus Petition at 7.

[34] *But see infra* para. 35.

[35] *See supra* para. 4.

[36] MTS and WATS Market Structure Inquiry Phase I, Third Report and Order, 93 FCC 2d 241 (1983) (*Access Order*), *modified on recon.*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *affirmed in principal part and remanded in part sub nom., National Ass' n of Regulatory Utility Comm'ners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S.Ct. 1224, 1225 (1985), *modified on further recon.*, 99 FCC 2d 708 (1984), *recon. denied*, 101 FCC 2d 1221 (1985), *further recon. denied*, 102 FCC 2d 849 (1985), *appeal pending sub nom., U. S. Telephone, Inc. v. FCC*, No. 84-1115 (D.C. Cir. Mar. 23, 1984).

[37] *Access Order* at 268.

[38] OTC aknowledges the extraordinarily high costs of providing services to business subscribers that use temporary structures in the Gulf, such as, in OTC's case, oil companies operating drilling rigs and platforms. *See* OTC comments in *Offshore Radio Telecommunications Services*, Docket No. 20368 at paras. 21, 22, and 26.

[39] Initially, the common line (CL) pool was mandatory, while NECA's end user common line (EUCL) and traffic sensitive (TS) pools were voluntary. LECs could choose either to join NECA's TS or EUCL pools, or to file their own tariffs. In practice, the large LECs almost universally file separate tariffs, and the voluntary NECA pool members are almost exclusively small telephone companies. The CL pool will become voluntary beginning in 1989, and we anticipate that large LECs will elect to file individual CL tariffs while small companies are likely to remain in the NECA CL pool.

[40] *Access Order*, 93 FCC 2d at 335. *See also* 47 C.F.R. § 69.601(a).

[41] *Id.*

[42] North Carolina Util. Comm'n v. FCC, 552 F.2d 1036, 1045 Cir. 1976, *cert. denied*, 434 U.S. 874 (1977).

[43] *See* Public Notice, Mimeo No. 4520 (released May 21, 1986).

[44] This Commission has defined a "wireline carrier" as one that provides landline local exchange service. *See* Revision and Update of Part 22 of the Public Mobile Radio Services Rules, Memorandum Order and Opinion, CC Docket No. 80-57, 95 FCC 2d 769, 772 (1982).

[45] Section 214 states, in relevant part: "[N]o such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single state unless such line constitutes part of an interstate line; (2) local, branch, or terminal lines not exceeding ten miles in length." *See also*, Section 2(b) of the Act, 47 U.S.C. § 152(b).

[46] Using AT&T once again as an example, we note that this Comission concluded that AT&T is a dominant carrier in MTS services. *See Competitive Common Carrier Services and Facilities Authorizations*, CC Docket No. 79-252, *Sixth Report and Order*, 99 FCC 2d 1020, (1985); *vacated and remanded, MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985). AT&T has not, however, participated in local exchange service since the divestiture of its operating companies.

[47] *See* Offshore Telephone Company, File No. W-P-C-4535, Application for Section 214 Authorization at 1 n.2 (July 20, 1982).

[48] *See* Public Notice, Report No. CL-87-44 (released Nov. 6, 1986). Frequency Block B frequencies are those reserved for wireline carriers.

[49] *See The Offshore Telephone Company*, Memorandum Opinion and Order, 2 FCC Rcd 4575 (1987).

[50] *Id.*

[51] With respect to OTC's use of rural radio and Telephone Maintenance Radio Service frequencies, we note that under the Commission's procedures for processing applications for such use, the Commission relied on certifications made by the applicant, unless such certifications raised questions on their face or questions were raised by other parties. Thus, the Commission's grants of the applications are not premised upon any determination of Offshore's eligibility. *See* 47 U.S.C. § 312(a)(1) and (2). Regardless of any representations made by Offshore in its radio applications, we note that the Commission has since eliminated the wireline restriction on the frequencies assigned to Offshore. Elimination of Separate Frequency Allocation Structure, 99 FCC 2d 311 (1984).

[52] Offshore Telephone F.C.C. Tariff No. 2, Trans. No. 34 (filed March 27, 1987).

[53] We note, in addition, that OTC's request to be treated as a local exchange carrier contains an implied concession that the Commission has never made a formal determination with respect to its status. *See also* Letter from Chief, Tariff Division, to Robert Healy, Counsel, OTC, dated Apr. 10, 1985.

[54] A decision to include OTC in NECA could prompt a deluge of NECA applications from specialized providers. OTC observes that NECA's membership includes carriers that serve high cost regions located in Florida, the Grand Canyon and the Alaska bush. These situations are not before us, and were apparently included in traditional, pre-access settlement arrangements in accordance with carrier-to-carrier agreements permitted under the Act, 47 U.S.C. §§ 201(a), 211. Moreover, in *Offshore Telephone Co. v. South Central* Bell Telephone Co., 2 FCC Rcd 4546, 4556 (1987), we stated that although OTC shares some characteristics of certain carriers that were included in the toll pool, it is unlike pool members in terms of its user characteristics, as well as the fact that it does not provide exchange service. Indeed, OTC shares far more service characteristics with other services that were excluded from the toll pool. The record revealed that other services that were end-link in nature or geared to a limited clientele, such as mobile, air-to-ground, maritime, and services to oil and gas rigs, were excluded from nationwide averaged rates and toll settlements, regardless of whether such services were provided by local exchange carriers or by carriers of a more limited or specialized nature. *Id.*

[55] *See supra* n.19 and accompanying text.

[56] In the materials submitted in the complaint proceeding, OTC indicated that it provided no intrastate services between 1973 and 1980, but that in 1981, it provided service terminating at one subscriber location situated within the territorial waters of Louisiana. In materials it submitted in response to the Bureau Letter, however, OTC does not state whether that subscriber's facilities still exist in that location or whether OTC continues to provide this service.

[57] In the Bureau Letter, OTC was asked to detail its subscribers' calling patterns and indicate the number of rig-to-rig calls placed by subscribers. OTC has not provided this information. In its response, however, OTC indicates that an extensive number of interplatform calls do occur. OTC states further that it was unable to quantify these calls because all local calling is switched by SCB at Morgan City. OTC Response at 23.

[58] OTC asserts that some Independent companies contract out a portion of their switching, OTC Brief at 36 (Sept. 12, 1986), and argues that several exchanges located in Southern Bell's urban service areas are examples of exchanges that serve business users and have no residential subscribers. *See* Letter to Secretary, Federal Communications Commission, from Robert W. Healy, Counsel, OTC, dated Mar. 10, 1987.

[59] OTC did not provide data that demonstrate the effect of its participation on the NECA NTS and TS pools, stating instead that it is unable to derive such data until it determines the effect of jurisdictional separations procedures on OTC's costs and revenues.

[60] In its complaint proceeding, OTC stated that its high costs are attributable, in part, to the difficulty and expense of contracting technicians to repair losses that result from frequent storm conditions in the Gulf. *See* OTC Comments in Offshore Radio Telecommunications Services, Docket No. 20368 at paras. 21, 22 and 26. To further illustrate OTC's high costs, AT&T points to Domiano's testimony introduced in the complaint proceeding that indicates that the ratio between OTC's average telephone plant investment per line and the lowest cost LEC telephone plant investment per line is 87 to 1. The ratio between the highest and lowest cost LECs' telephone plant investment per line is about 5 to 1. *See* AT&T Comments at 13.

[61] We note further that revenues generated by services such as radiotelephone, maritime, cellular, and land mobile, traditionally were excluded from nationwide rates and toll settlement arrangements and are excluded from NECA pools, even in instances in which these services are provided by traditional local exchange carriers. OTC services in reality appear to fall squarely within the separate category of mobile services as defined in Section 3(n) of the Act: "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and includes both one-way and two-way radio communication services." In fact, OTC's only station uses microwave spectrum allocated to it for Domestic Public Land Mobile Radio service.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re application of

PATHFINDER COMMUNICATIONS CORPORATION (WCUZ - FM) File No. BPH-830103AG

For a Construction Permit for Modification of WCUZ-FM, Grand Rapids, Michigan

MEMORANDUM OPINION AND ORDER

Adopted: June 20, 1988; Released: July 6, 1988

By the Commission:

1. The Commission has under consideration: (i) an application for review filed October 21, 1985, by Pathfinder Communications Corporation (Pathfinder), licensee of WCUZ-FM, Grand Rapids, Michigan, of the staff action denying Pathfinder's petition for reconsideration of the return of the subject application for a construction permit to modify WCUZ-FM; (ii) an opposition to the subject application for review filed November 8, 1985, by Muskegon Heights Broadcasting (Muskegon), licensee of WABM(FM), Muskegon Heights, Michigan; and related pleadings.[1]

BACKGROUND

2. On January 3, 1983, Pathfinder filed an application proposing a change in its transmitter site location and requesting a waiver of Section 73.207 of the Commission's rules for short spacings of five, seven and seven kilometers to stations WABM, WAOP (now WQXC), and WTHQ (now WNSN), respectively. The Chief, FM Branch, Audio Services Division, Mass Media Bureau, found that Pathfinder failed to make a showing sufficient to justify a waiver of § 73.207 and therefore denied the waiver request and returned Pathfinder's application on June 3, 1983. On July 3, 1983, Pathfinder filed a petition for reconsideration and submitted affidavits from its realtor, aeronautical consultant and engineer to support its request for waiver and grant of its application. Muskegon opposed Pathfinder's petition for reconsideration on both procedural and substantive grounds. For the next 23 months, various untimely pleadings, supplements, amendments and oppositions thereto were filed by the parties to this proceeding. Much of this material sought to introduce additional support for the requested waiver and, ultimately, to propose another transmitter site which was less short-spaced than the site specified in Pathfinder's original application.

3. In a *Memorandum Opinion and Order* (*MO&O*), Mimeo No. 7157, released September 19, 1985, the Chief, Audio Services Division, Mass Media Bureau, dismissed all the untimely filings without consideration. Taking into consideration all timely filed matters, the Bureau ruled that Pathfinder had failed to make a showing sufficient to justify a waiver of the spacing requirement. Specifically, the Bureau found that Pathfinder's 70 dBu contour encompassed nearly all of Grand Rapids and therefore its service was not patently inadequate. *See Greater Media, Inc.*, 59 FCC2d 796 (1976), 38 RR2d 1542 (1976). The Bureau also determined that the evidence submitted in support of Pathfinder's claim that no fully-spaced site was available was inconclusive and that Pathfinder had failed to explain why its coverage could not be improved by increasing the height of its existing tower. Finally, the Bureau ruled that the proposed increase in population to be served outside the city of license did not justify the interference proposed by Pathfinder. Therefore, the Bureau denied Pathfinder's petition for reconsideration.

THE PLEADINGS

4. In its application for review, Pathfinder alleges that the Bureau committed reversible error in refusing to accept the amendments it proferred after the filing of its petition for reconsideration and cites two cases which it claims support acceptance of amendments after the 30-day period for filing petitions for reconsideration has expired. *See Lebanon Broadcasting Co.*, 43 RR2d 816, (Broadcasting Bur. 1978) and *Home Service Broadcasting Corp.*, 16 RR2d 1095 (1969). Pathfinder also charges that the Bureau's assessment of the evidence submitted in support of the request for waiver of 47 C.F.R. § 73.207 was erroneous. Accordingly, Pathfinder requests that the Commission reverse the Bureau's ruling and grant its application, as amended.

DISCUSSION

5. The Commission's discretionary authority to consider late-filed supplements to a petition for reconsideration derives from 47 U.S.C. § 405 and 47 C.F.R. § 1.106(f) which states:

> [A] petition for reconsideration and *any supplement thereto* shall be filed within 30 days from the date of public notice of the final Commission action . . . . No supplement or addition . . . filed after expiration of the 30 day period will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefore.

47 C.F.R. § 1.106(f) (emphasis added). The importance of enforcing the Commission's rules governing filing periods and procedures cannot be overstated. As the Bureau noted earlier in this proceeding, "[f]ailure to enforce the rules with respect to timeliness poses a grave danger of the staff being overwhelmed by a seemingly never-ending flow of pleadings." *MO&O* para. 10. There can be no question that enforcement of filing deadlines and procedures is both necessary and desirable.

6. Nevertheless, Pathfinder submits that the Bureau erred in refusing to accept its amendments, claiming that court and Commission precedent support acceptance of minor curative amendments to applications that have been either dismissed or returned as unacceptable for filing. *See James River Broadcating v. FCC*, 399 F.2d 581 (D.C. Cir.

1968). In some instances, Pathfinder argues that the amendments have been accepted long after a petition for reconsideration was filed. *See Lebanon Broadcasting Co.*, 43 RR2d 816 (B/cst Bur. 1978); *Home Service Broadcasting Corp.*, 16 RR2d 1095 (1969). While Pathfinder is correct in its assertion that the Commission has accepted curative amendments after the filing of a petition for reconsideration, these cases do not establish a general rule allowing all untimely amendments and Pathfinder's reliance upon them is misplaced.

7. In the cases cited by Pathfinder, the amendments allowed cured the defect for which the underlying applications were deemed unacceptable. In the instant case, however, pathfinder's amendments do not cure or eliminate the spacing deficiencies for which its application was returned; rather, Pathfinder's amendments merely replace one deficient proposal with another, albeit less, deficient proposal. *James River Broadcasting v. FCC*, 399 F.2d 581, and the cases following it stand for the proposition that applicants should be permitted to amend their applications after the cut-off date to *cure* or *remove* a defect so long as such an amendment does not require assignment of a new file number.[2] These cases do not support acceptance of untimely amendments which substitute but do not remove deficiencies. To extend the ruling of *James River* to require acceptance of all untimely amendments would, as the Bureau noted, overwhelm the staff and application process and severely delay the initiation of service to the public. Accordingly, we believe that the Bureau properly refused to consider Pathfinder's untimely amendments and supplements and that no reversible error has been committed.[3]

8. We have also reviewed the Bureau's ruling on the sufficiency of the evidence timely submitted in support of Pathfinder's request for waiver of 47 C.F.R. § 73.207 and find that this ruling was proper.[4] Accordingly, IT IS ORDERED, That pursuant to 47 C.F.R. § 1.115(g), Pathfinder's application for review of the return of the subject application IS DENIED.

9. IT IS FURTHER ORDERED, That Muskegon's opposition to the application for review IS DISMISSED.

10. IT IS FURTHER ORDERED, That Pathfinder's request to remand or, in the alternative, to supplement the record and Muskegon's opposition thereto ARE DISMISSED without consideration.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] These include: (i) a request to remand or, in the alternative, to supplement the record, filed October 21, 1986, by Pathfinder; and (ii) an opposition to the request to remand or, in the alternative, to supplement the record, filed November 13, 1986, by Muskegon. These pleadings were filed outside of the authorized pleading cycle and are therefore untimely. *See* 47 C.F.R. § 1.115(d).

[2] In the case of FM applications, the "rule" of *James River* was superceded in 1985 by the "hard look" processing procedures adopted in the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985), *recon denied*, 50 Fed. Reg. 43157 (1985). *See also* 47 C.F.R. § 73.3522(a)(6) which restricts the filing of minor amendments to a period up to and including the 30th day following issuance of a Public Notice announcing the acceptance for tender of the underlying application, provided that the amendment does not cure a tenderability defect in the underlying application. After expiration of this 30 day period, minor amendments will be considered only upon a showing of good cause for late filing or pursuant to 47 C.F.R. § 1.65 or 47 C.F.R. § 73.3514. The "hard look" processing procedures do not apply in the instant case since Pathfinder's application was filed prior to their adoption.

[2] As the Bureau noted in its *MO & O*, Pathfinder may resubmit its various amendments and supplements in the form of a new application to modify the facilities of WCUZ-FM. Pathfinder is advised, however, that such an application is subject to the spacing requirements adopted in the *Report and Order* in BC Docket 80-90 (FM Broadcast Assignments), 94 FCC2d 152 (1983), *reconsideration granted in part*, 97 FCC2d 279 (1984). *See also* 47 C.F.R. § 73.207.

[3] Although we believe the Bureau's ruling was proper in this case, we wish to clarify one point. In rejecting Pathfinder's waiver request, the Bureau found that by the predicted method set forth in 47 C.F.R. § 73.313, using appropriate Commission propagation curves, the licensed 70 dBu contour of WCUZ-FM encompassed nearly all of Grand Rapids. In addition to the prediction method utilizing the curves, the rules also permit the filing of alternative supplemental methods of determining coverage (§ 73.313(e)). Both grid measurements and defraction studies are frequently used as supplemental methods. The Bureau determined that based upon a defraction study performed by the Office of Science and Technology, 74 percent of Grand Rapids would receive a signal of 70 dBu (3.16 mV/m) or greater. However, the Bureau erroneously asserted that a typical city falling entirely within a predicted 70 dBu contour would receive an actual signal strength of 70 dBu over approximately half of its area. In fact, encompassment of the entire community by a 70 dBu contour using the predicted method set forth in § 73.313 would result in field strengths of 70 dBu or greater at more than 50 percent of the locations, the actual percentage of the locations receiving at least a 70 dBu signal depending on the size and shape of the community and the relative location of the transmitter site. Exceeding 70 dBu at 74 percent of the locations in the community, as determined by either a defraction study or by the grid measurement method, would not necessarily be equivalent to the coverage obtained using the predicted method employing the curves. Because of the presence of buildings, vegetation and terrain variations, all cities will depart to some degree from a statistically uniform distribution of signal strengths. Taking the foregoing into account, we find that the criteria utilized in *Greater Media, Inc.*, 38 RR2d 1542 (1978), that at least 50 percent of a community receives a signal of 70 dBu or greater, is a reasonable and useful standard for determining adequate community coverage when employing alternative supplemental methods in addition to our propagation curves.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE SOUTHWEST INCORPORATED — AAD 8-1924

Petition for Waiver of the January 1, 1987, Effective Date of the Commission's Five-year Amortization Policy.

MEMORANDUM OPINION AND ORDER

Adopted: June 16, 1988; Released: July 6, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On March 18, 1988, GTE Southwest Incorporated (GTE) filed a petition for waiver of one aspect of the Commission's *1988 Depreciation Rates Order*.[1] The *1988 Depreciation Rates Order* prescribed various depreciation rates and amortizations for nineteen carriers, including GTE. The depreciation reserve imbalances of these carriers were amortized over a five-year period commencing January 1, 1987, the amortization period which the Commission established in the *Amortization Order*.[2]

2. In the *Amortization Order*, the Commission established a five-year amortization for the depreciation reserve imbalances of all local exchange carriers (LECs) subject to the Commission's depreciation prescriptions that had not been granted amortization authority in prior orders. The Commission rejected the position that the LECs should be allowed to commence their amortizations at any date between January 1, 1987 and January 1, 1988, and ordered instead that all amortizations commence on January 1, 1987. [3] The Commission stated further that, if a carrier would be disadvantaged by a January 1, 1987, effective date, it could file a petition for waiver of that requirement.[4]

II. GTE'S PETITION

3. In its petition GTE seeks permission to begin amortization of its depreciation reserve imbalance on January 1, 1988. GTE contends that it would be prejudiced if it is required to use an effective date of January 1, 1987, to begin the five-year amortization period for its Arkansas and Texas operations. GTE states that it wants to maintain consistent depreciation rates and reserve imbalance amortizations between the interstate and intrastate jurisdictions. In addition, GTE states that the staff of the Public Utility Commission of Texas (Texas PUC) has indicated a "strong desire" to maintain consistent rates between the interstate and intrastate jurisdictions. Finally, GTE claims that the use of an effective date of January 1, 1987, for interstate rates could prejudice GTE's opportunity to achieve full capital recovery for its Texas intrastate jurisdiction.

III. DISCUSSION

4. We deny GTE's waiver request. GTE's waiver request does not adequately describe how it would be harmed by conformance to the policy established in the *Amortization Order*. Its petition is not based upon a showing of inadequate earnings, as was the case in a similar request for waiver granted to Michigan Bell.[5] In that order, we found that Michigan Bell would be disadvantaged by a January 1, 1987, amortization date because Michigan Bell's interstate earnings were below the Commission's 12% authorized rate of return and application of the uniform amortization would reduce its earnings even further. Unlike Michigan Bell, GTE has made no such showing of underearning to warrant a grant of its request for waiver. Thus, there is no support for its statement that a January 1, 1987 commencement date could prejudice its opportunity to achieve full capital recovery for its Texas operations.

5. With regard to GTE's assertions pertaining to the state commission's concern regarding consistent depreciation rates, we note that the *Amortization Order* provided that, "[t]o the extent that any state concludes that the depreciation charges resulting from our action will have an adverse impact on intrastate revenue requirements, the state commission can take whatever steps are available under state law to use a differing depreciation expense."[6] Thus, even if the Texas PUC desired a January 1, 1988 amortization commencement date for intrastate ratemaking,[7] that factor is not determinative of our treatment of GTE's request. Furthermore, we note that the Texas PUC did not file any comment during the *1988 Depreciation Rates* proceeding regarding the January 1, 1987 date, nor did it file any support of GTE's petition in this proceeding.

6. GTE also asserts that application of the January 1, 1987 amortization commencement date would disrupt its financial reporting process, and is contrary to the Commission's previous policy of allowing a carrier to choose an amortization effective date during the subject year. Neither argument is persuasive. GTE's allegation that it will incur financial reporting problems is unsupported, and we see no reason why denial of its request would place it in a position different from that of the other LECs. GTE's request that we be consistent with the previous policy for amortization effective dates ignores the fact that the Commission set forth reasons why such flexibility is not appropriate for the five-year amortization.[8]

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that GTE Southwest Incorporated's petition for waiver of the requirement that it commence its amortization January 1, 1987 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Prescription of Revised Percentages of Depreciation Pursuant to the Communications Act of 1934, as Amended, for: AT&T Communications *et al.*, 3 FCC Rcd 1242 (1988) (*1988 Depreciation Rates Order*).

[2] Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers, 3 FCC Rcd 984 (1988) (*Amortization Order*).

[3] *Id.* at 988.

[4] *Id.* The Commission delegated authority to the Chief, Common Carrier Bureau to act on any such requests for waiver of the amortization commencement date without seeking public comment thereon. *Id.* at n. 57.

[5] Michigan Bell Telephone Company, Petition for Waiver of the January 1, 1987, Effective Date of the Commission's Five-Year Amortization Policy, 3 FCC Rcd 1980 (1988).

[6] Amortization Order, 3 FCC Rcd at 989.

[7] GTE does not indicate whether this is in fact the position of the Texas PUC.

[8] See Amortization Order, 3 FCC Rcd at 988.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GROUP W CABLE, INC.,
Complainant,

v. File No. PA-86-0009

WISCONSIN TELEPHONE CO.,
Defendant.

ORDER

Adopted: June 24, 1988; Released: July 6, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On April 9, 1986, Group W Cable, Inc., filed the above-referenced complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224. On June 20, 1988, All Remaining Partners (ARP) and Bresnan Communications Company, sucessors in interest to Group W Cable, submitted a letter requesting dismissal of the complaint. Complainant advises that such request is based on the fact that there are no longer any issues in controversy. On the basis of the statement contained in the complainant's letter, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by ARP and Bresnan Communications Company is DISMISSED and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

United Telephone System, Inc.'s Permanent Cost Allocation Manuals for the Separation of Regulated and Nonregulated Costs — AAD 7-1688

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 1988; Released: July 7, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. On August 28, 1987, six United Telephone System, Inc. local exchange carriers (collectively, United)[1] filed their cost allocation manuals[2] pursuant to the *Joint Cost Order* [3] governing the accounting separation of United's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, the manuals were implemented on January 1, 1988, the same day that the revised Uniform System of Accounts (USOA) became effective.[4] The manuals include lists of United's respective nonregulated activities, lists of activities United treats as incidental to regulated for accounting purposes, information on affiliate transactions, information on employee time reporting, and information describing how USOA accounts are allocated between regulated and nonregulated activities.

2. Four parties filed comments on United's manuals.[5] and United filed a reply. In addition, United submitted a letter to the Commission describing changes to the manuals based on United's internal review and the parties' comments.[6] We have reviewed the pleadings and the United manuals for consistency with the Commission's rules. We have concluded that while the United manuals are deficient in some respects, their format and content generally provide the Bureau with a sufficient understanding of the proposed cost allocation procedures to permit us to make an informed judgment as to the ability of the manuals to prevent cross subsidy. We conclude that, overall, United's manuals provide sufficient assurance against the misallocation of costs and revenues to permit their continued use.

3. We require, however, that in specific instances United specify in greater detail the procedures it intends to follow in apportioning the costs and revenues of regulated and nonregulated activities, and in some cases, to correct ambiguities and omissions in its manuals. We also require United to submit revisions to its manuals, and we shall solicit public comment on the revisions. Any revisions to the manuals that result from the instant Order approving the manuals or a subsequent Order concerning the revisions will be made effective retroactive to January 1, 1988. We therefore approve United's cost allocation manuals subject to a number of conditions and requirements for the submission of further information.

4. This Order is divided into three substantive sections. Section II discusses general issues, including portions of the manuals that relate to nonregulated activities, incidental activities, affiliate transactions, and employee time reporting. Section III discusses issues raised in connection with the proposed apportionment methods and specific accounts. Section IV discusses procedural requirements for updating cost allocation manuals.

II. GENERAL ISSUES

A. Overall Sufficiency

5. The *Joint Cost Order* listed five types of information that must be included in the cost allocation manuals: (a) a description of each nonregulated activity; (b) a list of all the activities the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pools) to which amounts in the account or subaccount will be assigned, and of the allocation method for each cost category (or pool).[7] In addition, the manuals must contain a description of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the methods used to capture and allocate nonproductive time.[8]

6. MCI states that United's cost manuals cannot be effectively reviewed and will not permit accurate future audits because the manuals do not adequately describe or define critical cost data and essential allocation processes.[9] MCI also argues that the pooling and apportionment processes in United's manuals are not adequately defined or justified.[10] MCI refers specifically to United's plan to use

an "ill-defined" analysis to pool costs, and, as examples, MCI cites United's plans to pool costs based on its assets' "type," "use," "usage characteristic," and "applicability" to regulated and nonregulated activities as means to pool assets.[11] Expenses are to be pooled based on analyses of the "nature" of the expense, the "manner" in which the function causing the expense is performed, the "cost objective which causes the expense," and the "behavorial characteristics of the cost."[12] MCI asserts that no meaningful description of the United's "analysis" is provided.[13] MCI further asserts that United's manuals reflect the expectation that all central office switching equipment cost can be effectively assigned on a direct basis, but are vague as to how relative use will be calculated to support the apportionment.[14]

7. United replies that the *Joint Cost Order* did not require all detail be put into the manuals, but that this detail was expected to be included in the audit process.[15]

8. *General.* MCI raised similar objections to the manuals filed by the Bell Operating Companies (BOCs). Our responses to those arguments show how our review procedures for United's manuals will remedy MCI's concerns.[16] Our analysis of United's manuals reveals a number of ambiguities and omissions, but we believe that these problems may be readily cured by the submission of additional information and amendment. Our assessment of the sufficiency of the United manuals has focused on whether the manuals include the subject-matter areas mandated by the Commission, and whether cost allocation information is provided in enough detail for us to determine if cost allocations will be performed in a manner that minimizes the potential for cross subsidization. Cost manuals must provide a clear understanding of the basis upon which cost pools are formulated and of how the costs reflected in those cost categories will be allocated between regulated and nonregulated activities. In a number of specific instances, the United manuals fall short of explaining clearly how cost allocations are being performed for all cost pools. In addition, while United's manuals address the subject-matter areas required by the Commission, the information provided at times is insufficient for us to determine whether United will be in full compliance with the Commission's rules. The deficiencies, however, do not warrant rejection of United's manuals. The addition of greater detail and explanation should resolve our questions and respond to MCI's concerns that the manuals lack detail and adequate descriptions. We will request public comment on any changes that United makes to its manuals as a result of this Order.[17] To provide guidance to United in fashioning its amendments, we will address each of the issues raised by the commenting parties, along with additional issues we ourselves have identified.

9. *Cost Apportionment Definitions.* United did not reply directly to MCI's assertion that United's cost apportionment processes were poorly defined and include inadequate justifications. Our review of the United manuals, however, satisfies us that United has provided adequate explanations of the cost pool apportionment process. In Section 2 of the United manuals, entitled "Discussion of Cost Accounting Concepts," United provides clear and precise definitions of the terms used in its manuals.[18] In our view, these definitions are entirely adequate. We therefore disagree with MCI's statement that no "meaningful description" of United's term "analysis" is provided. We conclude that United's manuals include descriptions that satisfy the requirements of the *Joint Cost Order*.

10. *Direct Assignment of Central Office Equipment.* We share MCI's concerns regarding the effective assignment of all central office switching equipment on a direct basis and United's vague description of how relative use will be calculated to support the apportionment. We have noted below[19] that United's manuals suggest a shared use of network investment while its Reply Comments and Section 2 of its manual state that no such sharing will take place. By providing the additional information we request regarding nonregulated activities, United should satisfy many of MCI's concerns. Our review in Section III. C., *infra*, of each USOA account apportioned in United's manual should address the remaining MCI concerns about vague descriptions. While we challenge some of United's cost apportionment procedures for specific accounts, we believe that overall its cost apportionment procedures are adequate.

11. *Investment in Human Capital and Cross Subsidization.* MCI suggests that United's treatment of investment in human capital development costs presents an ineffective mechanism to limit cross subsidization in favor of nonregulated operations.[20] MCI argues that when employee training and development costs benefit nonregulated service offerings, but are recovered through regulated operations, there is improper cross subsidization.[21] United replies that training which benefits nonregulated service offerings would normally be given to employees whose labor costs would be allocated between regulated and nonregulated activities.[22] Therefore, according to United, training, as an overhead expense, would be apportioned according to the allocation of the employee's labor costs.[23]

12. The United of Ohio Cost Allocation Manual defines "Training Services" as covering "training classes and exercises dealing with all phases of telecommunications operations."[24] If United is making training classes and exercises available to personnel in both regulated and nonregulated activities, it should allocate those expenses. We agree with MCI that United's apportionment procedures for these shared training expenses lack sufficient explanation. We direct United to explain whether training provided to nonregulated activities is treated under "Training Services"[25] or under some other nonregulated activity. None of the United manuals identify adequately which USOA accounts include training costs. United's reply calls training an "overhead expense" that is properly being apportioned according to the allocation of the employee's labor costs. This may be appropriate, but United should revise its manuals to show training costs as an integral part of the "overhead" accounts containing the training costs (or possibly as a separate cost pool). The nonregulated activities section of the manuals should also include a reference to the USOA accounts containing shared training expenses. We also question why United of Ohio is the only United manual to include "Training Services" among its nonregulated activities. We direct United to explain this apparent omission from the other manuals.

B. Nonregulated Activities

13. The United manuals include the required descriptions of the companies' nonregulated activities.[26] Each manual is prefaced with a transmittal letter which explains that the nonregulated activities vary from company to

company.[27] We have reviewed each United manual's list and descriptions of nonregulated activities and have identified two activities for which United should expand its descriptions.

14. *Derived Local Channel.* The United of Pennsylvania Manual and the United of Indiana Manual identify "Derived Local Channel" as a nonregulated activity. Each manual states that a portion of this service will be transmitted by telephone lines used in tariffed services.[28] United indicates that shared use of network plant will be charged at tariff rates. The definition of "Derived Local Channel," however, implies that there may be some non-transmission shared use that is not offered under tariff. This implication appears to conflict with United's reply which states that there will be no shared use of network investment by nonregulated activities.[29] United needs to explain how this apparent contradiction will affect the sharing of network investment. If there is indeed a sharing, United needs to revise its manuals to apportion the shared plant, revenues and expenses between regulated and nonregulated operations.

15. *Training Services.* As mentioned in Section II. A., *supra*, the United descriptions of training services and the related apportionment procedures are inadequate and require further explanation. Our instructions in Section II. A. direct United to revise the Training Services section of its manuals.

C. Incidental Activities

16. The *Joint Cost Order* recognized that carriers provide a number of miscellaneous activities that should not be classified as regulated but that have traditionally been recorded in regulated books of account as a matter of convenience. The *Joint Cost Order* required carriers to include a list of these incidental activities in their manuals along with the justification for treating these activities as incidental.[30] The four criteria for classifying an activity as incidental are: (a) the activity must be an outgrowth of regulated operations; (b) it cannot constitute a separate line of business; (c) it must have traditionally been treated as incidental for accounting purposes; and (d) the total of all incidental activities must not exceed one percent of a carrier's total revenues.

17. As mentioned earlier,[31] the United manuals differ with respect to incidental and nonregulated activities. All six of the United companies list the following as incidental activities: "pole attachment fees;" "conduit rental fees;" "rent of office space;" and "strand rental fees." In addition to these activities, the United of Florida also lists: "billing and collection fees for state and local sales tax billed to the Company's customers and paid to the state;" "billing and collection fees for local and franchise fees billed to the Company's customers and paid to the city or county;" "billing and collection fees for 911 emergency service billed to the Company's customers and paid to the county;" and "fees charged a subscriber to provide copies and listings of telephone bills when requested by the subscriber."

18. We have identified several aspects of the incidental activities section that must be addressed by United in amendments to its manuals. United must clarify that "rent of office space" meets the Commission's criteria for incidental activities. To the extent that "rent of office space" is an activity that is provided to affiliates, it may constitute an affiliate transaction, and its costs must be recorded according to the affiliate transaction rules. United must also explain how United of Florida's additional incidental activities meet the criteria for incidental activities. United has not demonstrated that these activities traditionally have been treated as incidental for accounting purposes, nor has it explained why these activities are outgrowths of regulated activities. United must amend its manuals to make the specific showings required in the *Joint Cost Order*.[32]

D. Affiliate Transactions

19. The *Joint Cost Order* establishes specific rules governing the provision of assets and services to and from affiliates. These rules were created in order to discourage carriers from avoiding the cost allocation rules. If a carrier sought to avoid the application of fully distributed costing, it could, in the absence of the affiliate transaction rules, provide assets or services to, or obtain assets or services from, a separate but affiliated company in a manner that would allow nonregulated operations to bear less than fully distributed costs. The affiliate transaction rules specify the valuation standards that will be applied in accounting for transactions between affiliates. Those rules vary depending upon whether the transaction involves assets or services.[33] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[34]

20. Our review of United's treatment of affiliate transactions reveals that United has not fully complied with the requirements of the *Joint Cost Order*. As an initial matter, it is not always clear from United's descriptions of its transactions whether the assets or services rules would apply. For example, United states in its manuals that North Supply Company provides "materials and supplies" to operating telephone companies, but does not indicate whether these transactions involve the transfer of assets, the provision of services, or both. United must amend its manuals to correct this ambiguity.

21. We also observe that all of the transactions listed in the manuals are provided to United by its affiliates. This implies that United is not involved in any transactions in which it provides an asset or service to an affiliate. If the implication created by the manuals is correct, then United must clarify in amendments to its manuals that it provides no affiliate with any assets or services. If the implication is incorrect, United must amend its manuals to include all requisite information for each affiliate transaction for assets or services, including assets or services provided at tariff rates, that it provides to affiliates.

22. The description of transactions contained in United's manuals includes those with United Data Services, Inc., but does not indicate the terms or frequency of these transactions. United must amend it manuals to include this information. Additionally, at several places in its descriptions, United states that prices for services are "based on market prices" or "based on the cost of service." United is unclear as to the meaning of "based on." For example, "based on market prices" might mean "at market prices, plus a certain percentage," or "based on cost of service" might mean "at the cost of service, plus an absolute amount." United must clarify the meaning of "based on" in these contexts. Finally, United's manuals fail to comply with the Commission's requirement to submit a "chart" of its corporate structure. Although its manuals contain documents that it refers to as "charts," these

are in fact only lists of affiliates and do not adequately display all existing corporate relationships. We direct United to provide a chart of its corporate structure in its manuals.

E. Employee Time Reporting

23. The *Joint Cost Order* permitted carriers to select from among several methods of recording employee time. The Commission reasoned that, since wages and salaries would be used to develop cost allocation factors, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers are therefore free to use a combination of positive time reporting, exception time reporting, and specific studies in order to keep track of employee time. The *Joint Cost Order* also required that carriers include in their manuals a description of the methods used to teach, monitor and enforce accurate time reporting. In addition, carriers must also describe methods used to capture the costs of nonproductive time and the methods used to allocate those costs.[35]

24. In its cost manuals, United has proposed using a combination of three time reporting methods: positive time reporting, exception time reporting and survey time reporting. We have identified several problems with United's explanation of its proposed time reporting methods. First, United needs to be more specific about which groups of employees use the various time reporting methods. United indicates that certain of these groups will use more than one time reporting method.[36] In its revised manuals, United must explain which of the employees within these groups use each of the time reporting systems listed for their group and why. United must also state, in its revised manuals, whether any of its employees will be exempt from time reporting, and if so, the basis for the exemption.

25. Second, we require United to provide us with additional detail on the survey methodologies it will use to measure the time devoted to regulated and nonregulated activities by some of its employees. It is not clear whether United intends to survey all employees in work groups subject to survey, or to utilize a sampling of employees. Moreover, United has not provided any information on when, and how often, surveys will be conducted, or whether different methodologies will be utilized for different employee groups. United must amend its manuals to clarify its survey time reporting procedures.

26. Finally, United must provide more information on its procedures for capturing nonproductive time. The sole statement in United's manuals concerning this matter is that "[t]ime expended on nonproductive activities is captured and apportioned in relation to the directly assignable and directly or indirectly attributable work activities."[37] While United's apportionment method appears correct, United must amend its manuals to provide the details of its procedures for capturing nonproductive time.

F. Joint Use of Network Plant

27. In the *Joint Cost Order*, the Commission established that jointly-used network plant (central office equipment and outside plant) must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission elected to adopt a forecasted use approach in order to reflect the nature of capital investment decisions, *i. e.*, that investment decisions are made in anticipation of future use.[38] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.[39]

28. United states in its manuals that any shared-use costs of network investment will be "apportioned . . . by being charged the tariff rate for use of this asset."[40] United also states in its reply that "there will be no shared-use of the network investment by non-regulated activity."[41]

29. MCI states that United's proposed manuals do not comply with the basic cost allocation objectives of the Commission to shield ratepayers of regulated services from bearing the cost of nonregulated ventures.[42] MCI argues that United's manuals fail to deter underforecasts of nonregulated network plant usage, which results in a skewing of investment allocation.[43] Furthermore, MCI asserts, United's manuals impose no effective penalty for underforecasts of nonregulated usage, and do not offer true-up mechanisms for the reconciliation of usage forecasts with actual usage.[44] Finally, according to MCI, even if an effective penalty/true-up mechanism were in place, United's cost pools have been structured in a manner, *i. e.*, large and heterogeneous, which will not permit discrepancies between forecast and actual usage to be identified.[45]

30. In its reply to MCI's comments, United states there will be no shared-use of the network investment by nonregulated activities, and thus any discussion of central office cost pools and relative use calculation is unnecessary.[46] To the extent nonregulated activities utilize the network, such use will be provided as a tariffed service.[47] However, United notes, should this approach for assigning costs to the nonregulated activities change to a usage-based approach, the cost manuals will be revised and appropriate discussion of the methodology will be included.[48] Also, in response to MCI's comments regarding a lack of penalty for underforecasting and the length of forecasts period for calculating relative use, United replies that since it is not allocating costs based on relative use, it is unnecessary at this time for it to address these issues.[49]

31. We agree with United on this issue. Since United charges its nonregulated activities tariff rates for their usage of network plant, there is no investment in shared network plant to be apportioned between regulated and nonregulated activities. Therefore, we see no need for it to have a forward-looking allocator.[50] However, there are two requirements we place on United. First, if United's three-year forecasts of future operations indicate a planned usage of network plant by nonregulated activities that would not be provided at tariff rates, United must amend its manual to provide for such an allocator. Second, United has included language in the nonregulated activities section of its manuals that leads users of the manual to believe certain network investmest is indeed involved in shared use between regulated and nonregulated activities.[51] United must explain this language. Of course, if such sharing is part of its ongoing operations, United must: (a) revise its manuals to include apportionment bases for the applicable USOA accounts; (b) employ forecasting procedures that comply with Commission requirements; and (c) change the manuals' descriptions of "Network Costs"[52] to reflect shared use of network investment.

G. Other Issues

32. Ohio argues that all costs associated with the development, implementation and utilization of United's cost manuals should be assigned to United's nonregulated activities. This approach, according to Ohio, would be consistent with cost-causative principles since the manuals would not be necessary were it not for the introduction of nonregulated activities.[53]

33. United argues in its reply that the cost of development, implementation, and utilization of the manuals should be viewed the same as the cost of the annual audit related to this process. Since the *Joint Cost Order* stated that audit costs may be allocated using the general allocator, United submits that the general allocator is also appropriate for the costs associated with the manuals.[54]

34. In the *Joint Cost Order*, the Commission stated that it would not be appropriate to directly assign the entire cost of the independent audit to either regulated or nonregulated operations.[55] Similarly, we do not believe that the development, implementation and utilization costs associated with United's manuals should be assigned totally to nonregulated operations. Thus, we reject Ohio's argument.

III. Account - By - Account Analysis

35. United's manuals describe the methods it proposes to use to derive cost pools and to apportion costs between regulated and nonregulated activities. Section 3 of United's manuals describes how United determines "what cost pools should be established within the account to represent homogeneous groups of costs which may be further analyzed based on cost causation."[56] The manuals include a narrative description of how United starts with the USOA accounts, derives cost pools, and then develops appropriate allocation methods for each pool. Each allocation method is fully defined.[57] The manuals then display United's cost allocation tables with the following headings: "Account Analysis," "Dedicated Cost/Common Cost," "Dedicated Cost – Regulated Operation/Nonregulated Operation," and "Common Cost Allocation."[58] Under the headings for "Common Cost Allocation" are columns for "Cost Pools," "Allocation Method," and "Description of Allocator." We address here those issues raised by commenting parties with respect to the cost pool apportionment and cost allocation bases for individual accounts contained in the manuals, and any additional issues we have identified in our review of the manuals. Before discussing the specific account issues, however, we will discuss some general problems that relate to more than one account.

A. Procedures for Apportioning Cost into Pools

36. *Subsidiary Accounting System*. The United manuals discuss United's subsidiary accounting system in Section 2.8 (page 19). United states there that

> Dedicated non-regulated revenues and costs are recorded in accounts or subaccounts separate from the regulated accounts for revenues and costs. These types of costs would be those that are incurred exclusively for providing non-regulated activities . . . . Shared resource (employees or assets) costs and revenues directly identifiable are recorded in the regulated operating accounts with the non-regulated portion reflected in either subaccounts or subsidiary records designated as 'common' for a particular cost category and, at month-end, these records are cleared to zero through the use of an appropriate allocation methodology.

37. Ohio asserts that United's subsidiary accounting system needs to be explained in detail. According to Ohio, this concern is particularly critical in regard to the apportionment of Account 2212 - Digital Electronic Switching. Ohio asserts that United's proposal to charge its nonregulated activities tariffed rates for their usage of network plant, including digital electronic switching equipment, may result in such usage being priced incrementally, in contravention of the Commission's decision to require carriers to use fully distributed costing in their cost allocation manuals.[59] Therefore, Ohio contends that we should clarify whether United's costing methods for shared network plant that is provided to nonregulated activities at tariffed rates will be reviewable in tariff proceedings.[60]

38. United replies that the *Joint Cost Order* requires costs to be apportioned between regulated and nonregulated activities in accordance with principles that do not allow incremental pricing. United argues that Ohio's comments are thus without merit.[61]

39. We agree in part with Ohio. In the *Joint Cost Order*, the Commission stated that the level of detail reflected in the selection of cost categories would be governed by the degree to which a carrier is engaged in nonregulated activities. Moreover, the number of categories will be dictated by the costs of developing cost categories and whether additional categories would in fact yield more accurate allocation results. Finally, the Commission noted that some degree of importance must be attached to the relative stability of cost categories in order for the cost allocation manuals to be administered on an orderly basis.[62]

40. United describes Account 2212 as being dedicated to both regulated and nonregulated activities based on "Subsidiary Accounts" which "will maintain separation." United then states that "tariffed rates will be applied to Joint Use Assets." The *Joint Cost Order* requires, however, that United show the subsidiary accounts in the manual. Listing cost pools for the subsidiary accounts will represent a minor change with meaningful improvements in terms of the manuals' usefulness. We therefore require United to revise its manuals to include cost pools for each of the subsidiary accounts referred to in its manuals.

41. On the other hand, we support United's position regarding incremental pricing. United states that its cost manuals conform with the Commission's guidelines in the *Joint Cost Order*.[63] It then reiterates its intentions to comply with Commission guidelines in its reply to Ohio. Our review of the manuals confirms that United is using fully distributed costing rather than incremental costing to apportion costs between regulated and nonregulated activities. United's proposed treatment of shared network plant is fully consistent with the Commission's requirement that carriers charge their nonregulated activities tariffed rates for tariffed services.[64]

42. Ohio's concern relates to how United calculates its tariffed rates and, in particular, to how United intends to recover, from the recipients of regulated services, the costs that its manual apportions to regulated activities. That concern lies outside the scope of this proceeding. To avoid possible future confusion on this matter, however, we confirm that our approval of United's manual will not

keep Ohio from presenting, in a tariff proceeding, any argument regarding the use of incremental pricing techniques that it otherwise could have presented.

B. Accounts To Be Added

43. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proposals for each USOA account and subaccount.[65] Since that requirement would have mandated the allocation of amounts that are not used in the jurisdictional separations and interstate ratemaking processes, the *Automated Reporting Requirements Order* eliminated the allocation requirement for particular accounts.[66] Appendix C to that Order listed for the first time the particular USOA accounts and subaccounts that would be subject to joint cost reporting. In addition, that Order required that six accounts used in the interstate ratemaking process must be added to the list. These additional accounts are: Account 2004, Telecommunications Plant Under Construction -Long Term; Account 2441, Conduit Systems; Account 4120, Other Accrued Liabilities; Account 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from Disposition of Land and Art Works.

44. Because the list released in the *Automated Reporting Requirements* proceeding was not available until after United filed its manuals, the manuals omit several accounts contained on that list and one of the six accounts that was added to the list (Account 5050, Customer Premises Revenue). In addition, the manuals omit all other USOA acounts numbered in the 5000 series. We direct United to amend its manuals to include allocation proposals for each of the omitted accounts. If in making these revisions, United finds that it has nothing to report for some of these accounts, it must list these accounts in its manuals and indicate that it has nothing to report.

C. Specific Accounts

Account 1439 - Deferred Charges and Account 4120 - Other Accrued Liabilities

45. United must amend its manuals to create additional cost pools for these accounts. For Account 1439, a cost pool shall be established for deferred charges related to compensated absences. For Account 4120, a cost pool shall be established for liabilites related to compensated absences. [67]

Account 2212 - Digital Electronic Switching

46. United proposed to assign the costs in this account directly to regulated or nonregulated activities. Ohio argues that United is not complying with the *Joint Cost Order* because United ignores the forecasted relative use procedures specified for central office equipment.[68] In its reply, United states that it will not have any shared use of network investment by nonregulated activities, and to the extent that nonregulated services utilize the network, they will do so at tariffed rates.[69] Should this approach for assigning costs to nonregulated activities change to a usage-based approach, United notes, it will revise its manuals to reflect this change.[70]

47. As noted in paragraph 31, above, if United has no shared use of network plant, forecasted relative use procedures are not necessary at this time. However, if United's three-year forecasts of future operations indicate planned sharing of digital electronic switching for regulated and nonregulated services, United must amend its manual to provide for a forward-looking allocator. Moreover, if United finds that it presently has sharing of central office equipment, as is suggested by Ohio, United must revise its manuals to include forecasted relative use procedures.

Account 2682 - Leasehold Improvements

48. United proposes to allocate the "joint usage" cost pool in this account to regulated and nonregulated activities based on the same proportion as the allocation of the same lease in Account 2681, Capital Leases. In its comments, AT&T states that United fails to conform to the *Joint Cost Order*'s requirement that indirect assignment of costs be made through some logical linkage of cost causation to a directly assigned cost.[71] AT&T notes that United's leasehold improvements are incurred for all leased property, not just joint capital leases, and a more precise allocator would be one based on the assignment of all associated leaseholds.[72] In its reply, United states that it agrees with AT&T's suggestion, and has revised its manuals to allocate the "joint usage" cost pool to regulated and nonregulated operations in proportion to the usage of individual property, whether under operating lease or capital lease.[73] We concur with this change.

Account 2690 - Intangibles, Account 3500 - Accumulated Amortization - Intangibles, and Account 6564 - Amortization Expense - Intangibles

49. United assigns all costs in these accounts directly to regulated services. In its comments, AT&T states that it is likely that United has costs in these accounts, such as patents and other intangibles, that benefit nonregulated activities.[74] Ohio makes essentially the same argument in its comments, stating that some of the costs of developing the United name and logo should be allocated to nonregulated activities.[75] In its reply, United argues that it does not currently engage in, nor does it expect to engage in, nonregulated activities that would require these accounts to be allocated.[76] Additionally, United asserts that without a specific situation to analyze, a reasonable cost-causative related allocation basis would be difficult to develop. The best it could do, United notes, would be to revise its manuals to reflect two cost pools, one for regulated and one for nonregulated, and then directly assign each.[77] Finally, United states that assigning some costs related to development of the company name and logo to nonregulated activites would be inappropriate because the name and logo are registered trademarks of the parent, United Telecommunications, Inc., and are not owned by the regulated telephone operating companies.[78]

50. We agree with AT&T and Ohio that some portion of the costs in these accounts benefit the nonregulated activities of the telephone operating companies. Therefore, we direct United to amend its manuals to reflect the allocation of some of these costs to nonregulated activities. At the very least, United can create three cost pools, one for regulated, one for nonregulated, and a common cost pool. The regulated and nonregulated cost pools would be directly assigned to regulated and nonregulated activities. The common cost pool could be allocated using the ratio of nonregulated to regulated directly assigned costs.

Account 4340 - Net Non-Current Deferred Operating Income Taxes

51. United proposes to apportion the initial balance in this account between regulated and nonregulated activities, and then calculate and record separately all subsequent charges to regulated accounts and nonregulated subaccounts. However, United does not explain in sufficient detail how it will apportion the initial balances. United must amend its manuals to explain how the initial balances in this account will be apportioned between regulated and nonregulated activities.

Account 6534 - Plant Operations Administrative Expense and Account 6535 - Engineering Expense

52. AT&T observes that United assigns all costs in these accounts to regulated activities, but recognizes elsewhere in its manuals that network plant supported by these functions is used for both regulated and nonregulated activities. AT&T concludes that a portion of these costs should thus be assigned to nonregulated activities.[79] In it reply, United states that AT&T ignores the fact that both of these accounts are clearing accounts that contain only residual amounts. United also states that costs related to capital and nonregulated activities will be cleared to other accounts prior to any amount being recorded in clearing accounts.[80] Any amounts remaining in these accounts, according to United, would be period expense for regulated operations and need not be allocated to nonregulated activities.[81]

53. United and AT&T are both partially correct. Many of the costs United records in these accounts may be incurred solely for regulated activities. By referring to these accounts as "clearing accounts," however, United is misstating the true nature of the accounts. Part 31 of the Commission's Rules[82] allowed for clearing accounts. Clearing accounts were provided as a medium for the distribution of certain items which affect more than one account and which cannot be appropriately allocated as they are incurred. In theory, clearing accounts always netted to zero. Part 31, of course, was replaced with Part 32 (the new USOA)[83] on January 1, 1988, the day United implemented its manual. Accounts 6534 and 6535 are Part 32 accounts and are not classified as "clearing accounts" in the new USOA. Part 32 allows for credits to these accounts for amounts transferred to construction accounts.[84] But the balances remaining in the accounts after the transfers should include costs incurrred in the general administration (Account 6534) and general engineering (Account 6535) of telecommunications plant. United is correct to the extent that the credits to Accounts 6534 and 6535 reflect costs incurred for nonregulated activities classifications. United's manuals must be revised, however, to clarify what costs remain after these accounts are credited for all nonregulated costs and how the residual amounts are to be assigned or allocated between regulated and nonregulated activities.

54. AT&T is also correct to the extent that the United manuals give the appearance that telecommunications plant for which general administration and general engineering costs are incurred will be used by both regulated and nonregulated activities at other than tariff rates.[85] We require United to explain whether there are any amounts in these accounts after the transfers. If such amounts exist, United must explain how it intends to allocate these between regulated and nonregulated activities. Allocating these amounts in proportion to the allocation of the underlying plant is one cost-causative method.

Account 6512 - Provisioning Expense

55. United proposes to allocate the amounts in this account in proportion to the dollar value of material issues as indicated for use in regulated or nonregulated operations. We direct United to explain why it chooses dollar value as opposed to some more cost-causative allocator such as time reporting.

Account 6621 - Call Completion Service

56. For this account, United has cost pools for "Supervision," "Operator Services," "Operator Employment and Training," and "Service Observing." United directly assigns the "Operator Employment and Training" and "Service Observing" cost pools to regulated activities. "Supervisor" and "Operator Services," cost pools however, are allocated between regulated and nonregulated activities.[86] AT&T notes that if some costs of operator functions are allocated to nonregulated, then some of the costs of training operators and observing their functions should also be allocated to nonregulated activities.[87] United agrees with AT&T on this point and has revised its cost manuals to reflect the allocation of these two cost pools in proportion to the allocation of the "Operator Services" cost pool.[88] We concur with this change.

Account 6722 - External Relations Expense

57. In its manual, United initally proposed to divide this account into cost pools for "Regulated Operations by function," "Nonregulated Operations by function," and "Joint Operation by function." The first two sets of cost pools were to be directly assigned to regulated and nonregulated activities, and the joint operation cost pools were to be allocated "in proportion to the allocation of the remainder of the account." AT&T argues that the allocation methodology, as applied to residual corporate advertising expenses contained in joint operation cost pools, is contrary to the *Joint Cost Order* requirement that such advertising expenses be allocated in the same proportion as directly assigned and attributed marketing costs.[89] In its reply, United states that it agrees with AT&T,[90] and United has revised its manuals to create separate cost pools for residual corporate advertising expenses and allocate these cost pools using the marketing allocator. We concur with this change. However, in amending its manuals, United continues to propose that its joint operation cost pools be allocated "in proportion to the allocation of the remainder of the account." We believe that United should allocate these joint operation cost pools in proportion to the regulated operations and nonregulated operations cost pools for this account. In its revised manuals, United shall either propose such an allocator or explain why it should not be mandated.

Account 6790 - Provision for Uncollectible Notes Receivable, Account - 7150 - Gains and Losses From the Disposition of Land and Artworks, Account 7160 - Other Operating Gains and Losses, and Account 7370 - Special Charges

58. United proposes to assign all of the costs in these accounts directly to regulated operations. In its comments, AT&T states that it is probable that United's nonregulated activities will have associated uncollectible notes, will dispose of land or artworks, will have other operating gains and losses, and will incur special charges such as contributions, membership fees or abandoned projects.[91] Accord-

ingly, AT&T notes, United should allocate the costs in these accounts to both regulated and nonregulated activities. In response, United states that its nonregulated activities do not currently include, nor are they expected to include, any transactions that would require the use of Accounts 6790, 7150 or 7160.[92] Additionally, United notes, Account 7370 will not contain nonregulated expense because special charges for nonregulated activities would be charged directly to nonregulated accounts.[93] United represents, however, that "if circumstances should change regarding any of these accounts, the manuals would be revised to reflect an appropriate allocation methodology."[94]

59. We are not entirely persuaded by United's response. While we do not doubt United's statements regarding future use of these accounts, we are concerned that United has proposed no procedure for monitoring charges to these accounts to determine whether any of the charges should be allocated to nonregulated activities. Therefore, we require United to amend its proposals for these accounts. The amendments shall either propose appropriate allocation methodologies for these accounts or state that United will examine each charge to these accounts before directly assigning any of the charges to regulated activities. In addition, we require United to create a "contributions" cost pool in Account 7370 so that we may track United's contributions.[95]

Account 7220 - Operating Federal Income Taxes, Account 7230 - Operating State and Local Income Taxes, and Account 7250 - Provision for Deferred Operating Income Taxes

60. United proposes to allocate the current income tax and deferred taxes accounts on the basis of "subsidiary accounts." Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are not consistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income, since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, United's proposal to use "subsidiary accounts" as an allocator is unexplained. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in an appropriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated -- income taxes. We direct United to amend its manual accordingly.

IV. PROCEDURAL ISSUES

61. In this section we address two procedural issues affecting United's cost allocation manuals. These issues are: (1) the submission of revised manuals in compliance with this Order and (2) the routine submission of future amendments to the manuals.

62. *Revised manuals*. We have required United to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed United to submit additional information concerning its affiliate transactions, nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of United's methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that a determination on their compliance with Commission requirements would be based on a full record and so that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.[96] Similarly, we believe that our review of United's amendments will be aided by public comment on the revisions.

63. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement cost allocation manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our review of the updated manuals and their availability to the public, United must file two updated copies of each of its revised manuals with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[97] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a vertical line in the right margin of the page.

64. *Routine amendments*. In addition to reporting and recordkeeping requirements, we also must resolve the larger issue of the procedures United will be required to follow when updating its cost allocation manual. We conclude that United will be subject to the same requirements that we imposed on the BOCs.[98] As we stated in the BOCs' orders, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. Therefore, we will apply the following requirements for the update of United's manuals. First, because it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities, several categories of information require our attention before the manuals are implemented. These are: (1) changes to the cost categories and their allocation mechanisms, including changes reflecting the introduction of enhanced services that require shared use of basic network switch investment; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manuals will be deemed accepted unless the Bureau, pursuant to its delegated authority, rejects or stays the effectiveness of the change.[99]

65. Second, because other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes, we require that United file such changes in a timely manner.[100] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restruc-

turing. Finally, all other changes to the manuals should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

66. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements in the *Joint Cost Order*. At the same time, they minimize the number of times United must seek prior Commission approval before implementing a change and provides a system to ensure timely review of United's proposals.

V. ORDERING CLAUSES

67. ACCORDINGLY, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that the Cost Allocation Manuals filed by United ARE APPROVED, subject to the conditions noted in this Order.

68. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manuals shall be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock,
Chief, Common Carrier Bureau

FOOTNOTES

[1] The six United Tier 1 companies are: Carolina Telephone and Telegraph Company (United of Carolina), United Inter-Mountain Telephone Company (Inter-Mountain United), United Telephone Company of Florida (United of Florida), United Telephone Company of Indiana (United of Indiana), United Telephone Company of Ohio (United of Ohio), and United Telephone Company of Pennsylvania (United of Pennsylvania).

[2] Each manual is preceded with a cover letter stating that all six manuals are identical in terms of the cost accounting guidelines and cost manual methodology. The manuals differ only with respect to the types of incidental and nonregulated activities being offered by the respective companies. United states that these differences are minor at the present time. Because of the manuals' similarities, we address all of the United manuals in this Order. References to "manuals" are to all six manuals collectively.

[3] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Reconsideration Order*), *petitions for further recon. pending.*

[4] 47 C.F.R. Part 32.

[5] Comments were filed by: American Telephone and Telegraph Company (AT&T); International Business Machines Corporation (IBM); MCI Telecommunications Corporation (MCI); and Office of the Consumers' Counsel, the State of Ohio (Ohio).

[6] *See* letter from Denton C. Roberts, Assistant General Counsel--Telephone, United Telecommunications, Inc., to H. Walker Feaster, Acting Secretary, Federal Communications Commission, dated January 15, 1988 (*Roberts Letter*).

[7] *Joint Cost Order*, 2 FCC Rcd at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[8] *Id.* at 1321-22.

[9] MCI Comments at 2.

[10] *Id.* at 4.

[11] *Id.* at 5.

[12] *See id.*

[13] *Id.* at 4-5.

[14] *Id.*

[15] United Reply at 5-6.

[16] *See , e. g.*, BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 128 (1988) (*BellSouth Order*) at 129.

[17] If the additional material we are requesting does not permit us to determine whether United's cost apportionment methods meet Commission requirements, we will order United to adopt methods of our own choosing, pursuant to our delegated authority to implement the manuals.

[18] United Manuals at Section 2, pages 5-7.

[19] *See* "Nonregulated Activities," Section II. B., *infra*.

[20] MCI Comments at 9.

[21] *Id.*

[22] United Reply at 6.

[23] *Id.*

[24] *See* United of Ohio Cost Allocation Manual at Section 6, page 63.

[25] The United of Ohio manual is the only United manual to include "Training Services" under nonregulated activities.

[26] United Manuals at Section 6.

[27] *See* note 2, *supra*.

[28] *See* United of Pennsylvania Cost Allocation Manual at Section 6, page 63, and United of Indiana Cost Allocation Manual at Section 6, page 63.

[29] United Reply at 5.

[30] *Joint Cost Order*, 2 FCC Rcd at 1328.

[31] *See* note 2, *supra*.

[32] *Joint Cost Order*, 2 FCC Rcd at 1308.

[33] *See Joint Cost Order*, 2 FCC Rcd at 1335 and *Reconsideration Order*, 2 FCC Rcd at 6295. Services must be valued at the prevailing price, if the service is generally available to the public. If it is not generally available, the cost of the service will be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's rules. For assets, transactions will also be recorded at the prevailing price, if one exists. If not, assets transferred from the affiliate to the carrier will be recorded at the lower of net book cost or fair market value, while assets transferred from the carrier to the affiliate will be recorded at the higher of net book cost or fair market value. *Joint Cost Order*, 2 FCC Rcd at 1343, 1345, *amended by Reconsideration Order*, 2 FCC Rcd at 6308-09.

[34] *Joint Cost Order*, 2 FCC Rcd at 1328.

[35] *Id.* at 1321-22.

[36] United Manuals at 24-27.

[37] *Id.* at 17.

[38] *Joint Cost Order*, 2 FCC Rcd at 1319.

[39] *Reconsideration Order*, 2 FCC Rcd at 6288.

[40] United Manuals at Section 2.5.2, page 12.

[41] United Reply at 5.

[42] MCI Comments at 8.

[43] *Id.* at 10.

[44] *Id.* at 8-9.

[45] *Id.*

[46] United Reply at 5.

[47] *See id.*

[48] *Id.*

[49] *Id.* at 7.

[50] This is consistent with our requirement that Bell Atlantic amend its manual to eliminate hypothetical allocations for shared use of network plant that do not exist. *See* Bell Atlantic Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 109 (1988) (*Bell Atlantic Order)*, at 116, para. 68.

[51] *See* para. 14, supr a (discussion of nonregulated activities).

[52] United Manuals at Section 2.5.2, page 12.

[53] Ohio Comments at 3.

[54] United Reply at 8.

[55] *Joint Cost Order*, 2 FCC Rcd at 1331.

[56] United Manuals at Section 3, page 29.

[57] *Id.* at Section 3, pages 29-30.

[58] *Id.* at Section 3, Cost Allocation Tables.

[59] Ohio Comments at 3, citing Joint Cost Order, 2 FCC Rcd at 1310-10.

[60] Ohio Comments at 3.

[61] United Reply at 7-8.

[62] *Joint Cost Order*, 2 FCC Rcd at 1319.

[63] United Manual at Section 1.1.

[64] 47 C.F.R. §64.901(a).

[65] *Joint Cost Order*, 2 FCC Rcd at 1328.

[66] Automated Reporting Requirements for Certain Class A and Tier I Telephone Companies, Report and Ord er, 2 FCC Rcd 5770, (1987) (Automated Reporting Requirements Order) at 5775; petitions for reconsideration pending.

[67] These cost pools shall be in addition to the direct assignment cost pools we have directed United to list in its "Cost Pool" column. *See* para.40, *supra*.

[68] Ohio Comments at 2-3.

[69] United's Reply at 5.

[70] *Id.*

[71] AT&T Comments at 5.

[72] *Id.*

[73] United Reply at 3. *See also*, Roberts Letter, n. 6, *supra*.

[74] AT&T Comments at 2-3.

[75] Ohio Comments at 2.

[76] United Reply at 3.

[77] *Id.* at 4.

[78] *Id.* at 7.

[79] AT&T Comments at 3, citing United Manuals at Section 3.0, items 40, 45 and 49.

[80] United Reply at 4-5.

[81] *Id.* at 5.

[82] 47 C.F.R. Part 31.

[83] *See* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies, 51 Fed. Reg. 43498 (December 2, 1986).

[84] These amounts are to be computed on the basis of direct labor hours. *See* 47 C.F.R. Part 32 at Sections 32.6534(b), 32.6535(b) and 32.2000(c)(2)(ii) of Subpart C.

[85] We required United to clarify this point in the Nonregulated Activities section, *supra*.

[86] United Manuals at Section 3.

[87] AT&T Comments at 3-4.

[88] *See* Roberts Letter, n.6, *supra; see also* United Reply at 2.

[89] AT&T Comments at 2.

[90] United Reply at 2.

[91] AT&T Comments at 4.

[92] United Reply at 4.

[93] *Id.*

[94] *Id.*

[95] *See* BellSouth Order, *supra*, 3 FCC Rcd at 138.

[96] We require United to serve copies of its revised manuals on all parties to this proceeding.

[97] One copy will be made available in the Accounting and Audits Division reference room, while others will be maintained for staff use.

[98] *See, e.g.*, Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 433 (1988).

[99] A stay of the effectiveness of a proposed change will not extend beyond 180 days.

[100] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERITECH OPERATING COMPANIES — AAD 8-1911

Petition for Authority to Pay Commissions for Sales of Interstate Services

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 1988 **Released: July 6, 1988**

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On February 17, 1988 the Ameritech Operating Companies (Ameritech)[1] filed a petition seeking authority to pay commissions to their sales agents for the sale of jurisdictionally interstate services. Ameritech's petition was placed on public notice,[2] and two parties filed comments conditionally supporting the request. For the reasons set forth below, we grant Ameritech's request.

II. BACKGROUND

2. Ameritech's request has its origin in the sales agency programs which the Commission first authorized during implementation of the *Computer II* rules. [3] In the *BOC Separation Order*,[4] the Commission applied to the Bell Operating Companies (BOCs) a modified form of the structural separation requirements of the *Computer II* rules for their provision of customer premises equipment (CPE) and enhanced services. The Commission authorized the BOCs to provide CPE only through a separate entity and required the BOCs to file and obtain approval of capitalization plans for those entities. In their interim capitalization plans, three BOCs proposed that their separate subsidiaries market basic services jointly with their provision of CPE. They asked that the CPE entities be able to receive commissions from the BOCs or recover from the BOCs their costs of selling the basic services.

3. In the *Sales Agency Order*,[5] the Commission permitted the BOCs' CPE affiliates to market basic services jointly with CPE, and to receive commissions for their sales of network services. The Commission concluded that this limited form of joint marketing was consistent with the underlying goal of the *Computer II* rules, provided that the BOCs complied with several conditions. The Commission noted that no BOC had requested permission to pay commissions to sales agents for their sale of interstate services, and stated that a Rule Making would be required to consider whether commissions for sales of interstate services would be in the public interest.[6] Accordingly, the Commission authorized the payment of commissions only for intrastate services.

4. Two BOCs petitioned for clarification of the prohibition on the payment of commissions for interstate services. NYNEX sought permission to pay commissions on sales of physically intrastate but jurisdictionally interstate services by sales agents. Bell Atlantic asked for permission to pay commissions on two types of physically interstate services which it was authorized to provide. In the *Sales Agency Reconsideration Order*, the Commission concluded that it was not necessary to conduct a Rule Making to consider whether commissions should be allowed on those services. The Commission stated that the services for which commissions were sought were distinguishable from interstate services offered by American Telephone and Telegraph Co. It concluded that disallowing such commission payments would be a disincentive to attracting agents, thus undermining one of the policy goals of the *Sales Agency Order*.[7] Accordingly, the Commission granted NYNEX's and Bell Atlantic's petitions to pay commissions to their sales agents for the subject interstate services.[8]

5. The desirability of allowing the BOCs to pay commissions to CPE vendors, including their affiliates, for sales of network services also was considered when the Commission removed the structural separation requirements of the *Computer II* rules for the BOCs' provision of CPE. In the *BOC CPE Relief Order*,[9] the Commission replaced those requirements with nonstructural safeguards similar to those inposed on AT&T for its provision of CPE. The Commission concluded, however, that the BOCs' unseparated provision of CPE raised greater anticompetitive concerns than for AT&T. Accordingly, the Commission imposed on the BOCs the additional requirement that they must provide independent CPE vendors with a meaningful opportunity to market CPE jointly with the BOCs' network services.[10] The Commission stated that this may be accomplished through " . . . sales agency plans or other functionally equivalent means."[11] The Commission concluded that this additional safeguard would benefit the public in three ways: (a) independent vendors will be provided an opportunity to offer an integrated network services/CPE package efficiently; (b) such offerings will provide competition for the BOCs' own CPE operations and/or network sales departments; and (c) independent vendors might provide integrated services to CPE customers that the BOCs choose not to serve.[12] In our recent review of the BOCs' compliance with this requirement, we recognized that there are certain limitations to the BOCs' use of their existing sales agency plans as a means of providing meaningful joint marketing opportunities to independent CPE vendors. However, we approved those plans, including Ameritech's, subject to reassessment in two years.[13]

III. SUMMARY OF PLEADINGS

6. In its petition, Ameritech seeks permission to pay commissions to sales agents for interstate services such as those authorized for NYNEX and Bell Atlantic. It states that it must obtain flexibility to effectively market services, particularly interstate access services that are, in its view, subject to significant competition. It identifies possible services as " . . . private line/special access services utilized by large business customers – services such as basic digital service, digital data service, and high capacity service – and switched data services such as switched digital service and packet switched network service . . . ."[14]

7. The Independent Data Communications Manufacturers Association (IDCMA) conditionally supports Ameritech's request. IDCMA agrees with Ameritech that many of the services might successfully be marketed by sales agents, but it disagrees that these services are particularly subject to competition. IDCMA states that granting the petition would be consistent with the goals of the *BOC CPE Relief Order*, but it asserts that we must be assured that the opportunity for providing an integrated network services/CPE offering is available on equal terms to independent CPE vendors.[15] It suggests, therefore, that we require as a condition of the waiver that Ameritech provide a complete list of the services on which commissions will be paid, and information about the manner in which Ameritech will authorize sales agency arrangements for independent vendors.

8. The North American Telecommunications Association (NATA) states that it is unclear whether Ameritech seeks authority to pay commissions to independent CPE vendors in addition to its affiliate. NATA thus requests that we condition approval of Ameritech's request on the requirement that it provide a meaningful opportunity for independent vendors to earn commissions for sales of the interstate services.

9. Ameritech filed a reply on April 12, 1988 asking that the approval not be conditioned. It states that it fully intends to use unaffiliated sales agents consistent with its business needs, when such arrangements will benefit regulated interstate operations. Ameritech also points out that it is required to report to the Commission the services for which commissions are paid, thus satisfying IDCMA's concerns in this regard. Finally, Ameritech states that the manner in which it will compensate its affiliates for sales of interstate network services is governed by the Commission's accounting rules governing transactions between a regulated company and its affiliates[16], and thus it no longer pays a "commission" to its affiliated company for sales of network services.

IV. DISCUSSION

10. We grant Ameritech's petition, but find it unnecessary to attach any condition thereto. As noted in para. 3, *supra*, the Commission originally prohibited the payment of commissions for interstate services only because no BOC offered a specific proposal for that activity and the Commission thought that a Rule Making might be required to consider the implications thereof. *Sales Agency Reconsideration Order*, however, the Commission determined that a Rule Making was not necessary for authorization of such commissions. Rather, it concluded that authorizing commissions for a greater number of services would further the policy considerations underlying its approval of the BOCs' sales agency programs.[17] Accordingly, our review of Ameritech's proposed sales agency change need not concentrate on the jurisdictional nature of the services, but rather will address whether commissions for such services will further the goals underlying the *Sales Agency Order*.

11. The Commission has consistently expressed its concern that the sales agency programs be structured in such a way that vendors other than the BOCs' affiliates are informed of the programs and are able to become agents for the sale of network services. We have required BOCs to eliminate limitations or restrictions which impede independent vendors from full participation as sales agents.[18] Our recent review of the BOCs' sales agency programs revealed that most existing programs are limited in terms of the number of independent agents and services.[19] To the extent that limiting commissions to sales of intrastate services has discouraged vendors from becoming agents, removal of the limitation will have a beneficial effect. The comments filed herein offer no reason for limiting Ameritech's services according to their jurisdictional nature, and we find no public benefits supporting the limitation. Thus, we grant Ameritech's request and allow it to pay commissions for sale of both interstate and intrastate services.[20]

12. We do not agree with IDCMA or NATA that we should condition any authorization to pay commissions for interstate services. In the *BOC CPE Plans Order*, we rejected the argument that the BOCs must pay commissions for sales of all network services.[21] Indeed, apart from Centrex service, we have never required that specific services be included in the sales agency programs. Instead, we are allowing the BOCs the opportunity to structure their sales agency programs in the most efficient way possible, subject to our review in the near future. In any event, we note that Ameritech states that it will pay commissions to independent agents for sales of interstate services when business needs so warrant, and we have no reason to doubt its good faith representations in this regard. If it appears that Ameritech or any BOC is not generally providing a meaningful opportunity to independent vendors to participate in its sales agency program, or is unduly favoring its affiliate, the Commission can, as it has in the past, take appropriate enforcement action.[22]

13. IDCMA's request that we require Ameritech, as a condition of approval herein, to identify specifically all interstate services for which commissions will be paid also is not necessary. The Commission presently requires the BOCs to identify annually what services are sold by sales agents, and that information is available to the public.[23] Finally, we will not require as a condition of the grant that Ameritech provide information to us about the availability of the sales agency arrangements for independent vendors. There is no reason to assume that Ameritech's procedures for selecting sales agents for interstate services will be different from those procedures for selection of services and agents which we have approved and are now in place. If our assumptions prove to be wrong, we will take enforcement action as the Commission did in the *Sales Agency Reconsideration Order* when it found that two BOCs discriminated against independent sales agents by unduly withholding or delaying their authority to provide services. Also, as noted above, we will review the sales agency programs in two years, and any concerns such as those raised by IDCMA will, if necessary, be addressed then.

V. ORDERING *CLAUSE*

14. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), That Ameritech's petition to pay commissions on sales of interstate services IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Ameritech Operating Companies are Illinois Bell Telephone Co., Indiana Bell Telephone Co., Inc., Michigan Bell Telephone Co., The Ohio Bell Telephone Co. and Wisconsin Bell, Inc.

[2] Ameritech Operating Companies Seek Permission to Pay Commissions on Sales of Interstate Services, *Public Notice*, 3 FCC Rcd 1190 (1987).

[3] 47 C.F.R. §64.702. *See* Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980), *recon.* 84 FCC 2d 50 (1980), *further recon.* 88 FCC 2d 512 (1981), *aff' d sub nom.* Computer and Communications Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[4] Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies, 95 FCC 2d 1117 (1984) (*BOC Separation Order), aff' d sub nom.* Illinois Bell Telephone Co. v. FCC, 740 F. 2d 465 (7th Cir. 1984), *aff' d on reconsideration* FCC 84-252, 49 Fed Reg 26056 (1984), *aff' d sub nom.* North American Telecommunications Ass'n v. FCC, 772 F. 2d 1282 (7th Cir. 1985).

[5] American Information Technologies Corp. *et al.*, Interim Capitalization Plans For the Furnishing of Customer Premises Equipment and Enhanced Services, 98 FCC 2d 943 (1984) (*Sales Agency Order), recon.* FCC 85-582 (released November 15, 1985) (*Sales Agency Reconsideration Order).*

[6] *Sales Agency Order,* 98 FCC 2d at 956.

[7] *Sales Agency Reconsideration Order, supra,* at para. 33.

[8] Bell Atlantic, however, did not seek to implement a sales agency plan after it received permission to pay commissions on interstate services.

[9] Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, 2 FCC Rcd 143 (1987) *(BOC CPE Relief Order), recon.* 3 FCC Rcd 22 (1988) *(BOC CPE Relief Reconsideration Order).*

[10] *BOC CPE Relief Order,* 2 FCC Rcd at 156.

[11] *Id.*

[12] *BOC CPE Relief Order,* 2 FCC Rcd at 156; *BOC CPE Relief Reconsideration Order,* 3 FCC Rcd at 27.

[13] *See* Furnishingof Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 3 FCC Rcd 412, 421 (1987) *(BOC CPE Plans Order).*

[14] Petition at 3. Although Ameritech identified these specific services, it requests permission to pay sales commissions on *any jurisdictionally interstate service. Id.*

[15] IDCMA Comments at 3.

[16] See 47 C.F.R. §32.27(d).

[17] Sales Agency Reconsideration Order, supra, at para. 33.

[18] See, e.g., Sales Agency Reconsideration Order, supra, at para. 19.

[19] *BOC CPE Plans Order,* 3 FCC Rcd at 421.

[20] We will consider other requests for authority to pay commissions on interstate services on an expedited basis. Because no party herein opposed Ameritech's request, we will not establish a pleading cycle for any such request.

[21] BOC CPE Plans Order, 3 FCC Rcd at 421.

[22] *See Sales Agency Reconsideration Order, supra,* at paras 17-22.

[23] *See Sales Agency Order,* 98 FCC 2d at 958, note 46.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition of National Exchange
Carrier Association, Inc. for
Approval of Average Schedule
Supplemental Disbursement

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 1988; Released: July 6, 1988

By the Chief, Common Carrier Bureau

I. INTRODUCTION

1. On February 17, 1988, the National Exchange Carrier Association, Inc. (NECA) filed a petition that seeks approval of a one-time disbursement to reimburse average schedule companies for costs that are being incurred in converting to the recently adopted Part 32 accounting rules.[1] According to NECA, the expenses that are associated with converting to Part 32 are substantial, and the existing average schedules do not provide reimbursement.[2] NECA's request was thus directed to providing sufficient funds to permit this process of conversion to proceed expeditiously. In this Order, we grant NECA's request for a one-time supplemental disbursement to average schedule companies for costs associated with converting to Part 32 as specified herein.

II. BACKGROUND

2. In May 1986, the Commission adopted a new Uniform System of Accounts for Telephone Companies by adding Part 32 to its rules and deleting Parts 31 and 33, which formerly had governed telephone company accounting. [3] Part 32 is designed to incorporate modern measurements and techniques and to eliminate obsolete accounts and archaic terminology, wherever possible.[4] In adopting Part 32, the Commission carefully considered the cost burden on the industry of implementing the new accounting rules, and modified those rules to reduce burdens upon small telephone companies. Even with these adjustments, we recognized that the burden of conformance that exists for small average schedule companies is not insignificant.[5]

3. Under Commission rules,[6] NECA is required to submit proposed revisions to the average schedule formulas for each annual period subsequent to December 31, 1986, or certify that no revisions are warranted for such period on or before June 30 of the preceding year. The current formulas were approved by the Commission in 1986,[7] and do not reflect the costs of Part 32 conversion. The Commission declined to accept NECA's proposed revisions that were filed on June 30, 1987, and directed NECA to file proposed revisions on or before October 3, 1988 with an effective date of January 1, 1989.[8]

III. THE PETITION

4. The NECA petition states that it analyzed several proposals for a recovery methodology and selected the methodology that it believed would provide equitable treatment for both small and large companies.[9] NECA proposes a two-part approach, including an equal settlement per company and an equal settlement per access line. The proposed methodology therefore recognizes both fixed costs incurred by companies, regardless of size, and variable costs that are based on the size of each company.[10] The methodology assumes these one-time costs will not be included in future average schedule formula revisions.[11]

5. NECA estimates that the minimum fixed cost incurred by a company would be approximately20.000.[12] NECA has identified the most significant of these costs as software purchase and installation, training, salaries, and other costs associated with redesigning forms and reports and the related services of outside accounting firms. NECA proposes a fixed base amount of5,000 per company, regardless of size, that is based on the assumption of a 25% interstate allocation of the20,000 total minimum cost.[13] NECA also proposes a variable amount to recognize the additional costs that vary with the size of the exchange carrier.[14] NECA proposes that this additional amount be based on the number of access lines:[15]

Access Lines	Settlement Per Line
First 1,000	1.50
Next 4,000	1.30
Next 5,000	1.10
Next 15,000	.90
Next 25,000	.80
Over 50,000	.70

NECA estimates that the total supplemental settlements would be6.9 million if all the average schedule companies convert to Part 32.[16]

IV. COMMENTS OF PARTIES

6. Four parties filed comments on NECA's proposal.[17] All of these parties supported reimbursement of Part 32 implementation expenses for the average schedule companies, and agreed that conversion of these companies to the USOA system will facilitate pool administration and provide more uniform data. NTCA urges Commission approval of NECA's proposal since "pooling, state regulatory agencies, financing institutions, and other industry influences will force small and rural exchange carriers to use Part 32 accounting."[18] NTCA agrees with NECA that the costs associated with implementation of Part 32 would be proportionately greater for small exchange carriers.[19] NTCA and NECA contend that the supplemental disbursement will encourage average schedule companies to convert to Part 32 accounting, thereby providing substantial benefits from more accurate accounting information to the companies, their managements, NECA, the exchange carrier industry, and the public as a whole.[20] More uniform data will also assist NECA in preparing future average schedule formula updates.[21]

7. OPASTCO agrees with NECA and NTCA that average schedule companies are discovering the need to convert to Part 32 to facilitate the pooling, settlements, and planning processes.[22] With the high costs currently

associated with conversion, OPASTCO believes this reimbursement should not be delayed until NECA's next revision to the schedules.[23]

8. According to USTA, special settlement arrangements are required for "certain costs, which cannot be incorporated in the average schedules and which occur nationwide as part of a project to benefit the entire industry."[24] USTA notes that in the past special reimbursement arrangements have been made for calling card service data bases, Carrier Access Billing Systems (CABS), average schedule administration, and official toll expenses, and that conversion reimbursement should be afforded similar treatment.[25] USTA also supports NECA's methodology for reimbursement.

9. ICORE states that NECA's estimates of the costs of conversion appear reasonable. It sees substantial costs in converting to Part 32, whether a company employs outside accounting assistance or performs most accounting tasks internally. ICORE also notes that the use of estimated costs, both fixed and per access line, departs from NECA's normal special reimbursement procedures which are based exclusively on actual costs. However, given the complexity of a complete accounting conversion and the difficulty in tracking and quantifying all of the additional costs incurred, ICORE concluded that the use of estimated costs in this instance is reasonable. In ICORE's view, the recording and reporting of all of the costs involved in a project of this magnitude would unduly burden the average schedule companies. ICORE also states that NECA's proposed compensation schedule is reasonable in that it recognizes the significant fixed costs that are associated with changing the accounting of an exchange carrier while also recognizing that larger companies may require increasingly sophisticated procedures.[26]

10. Although ICORE generally supports NECA's proposal, it differs with respect to the proportion that should be disbursed from the interstate jurisdiction. NECA proposes a 25% interstate allocation of the fixed costs of conversion of Part 32. ICORE, however, recommends a 50% interstate allocation for fixed costs for companies in states that have prescribed Part 32 for intrastate purposes and 100% for average schedule exchange carriers that operate in states that have not adopted Part 32.[27] ICORE states that the 50% allocation would be consistent with the special reimbursement for CABS costs.[28]

11. NECA filed a reply. After noting that all of the comments support the special reimbursement, NECA addressed ICORE's proposal that Part 32 costs should be allocated on the same basis as CABS costs. NECA noted that although CABS costs are attributable entirely to toll operations as a consequence of a specific rule that covers only billing costs,[29] "Part 32 conformance costs are relevant to all phases of telephone --local and toll and are recognized as such in the Part 36 rules."[30] As a consequence, because Part 32 conversion costs are obviously different from CABS costs, and relate to the overall operations of the carrier rather than just to billing, NECA concludes that they should not be allocated on the same basis as CABS costs.[31]

IV. DISCUSSION

12. Conversion to Part 32 accounting will serve the public interest. Greater uniformity in exchange carrier financial data will facilitate more efficient pool administration and the development of more accurate average schedules.[32] Moreover, all parties agree that the ratio of accounting costs to total costs that are associated with converting to Part 32 are proportionately higher for average schedule companies, with the consequence that the supplemental disbursement should help to alleviate this otherwise uncompensated cost burden on average schedule companies.[33] As a consequence, we conclude that a supplemental disbursement to facilitate the conversion of average schedule companies to Part 32 will help in achieving Communications Act objectives while ensuring that average schedule companies receive compensation in the interstate jurisdiction for the costs of conversion.

13. In determining the amount of the supplemental disbursement, the Industry Average Schedule Task Group (Task Group)[34] assisted NECA in developing a supplemental methodology that recognized five categories of costs that would be associated with conformance.[35] As noted above, the categories of costs relate to software purchase, software installation, training, salary, and other costs that are associated with redesigning forms, reports and employing the services of outside accounting firms. These costs would, of course, vary from company to company, depending on the size of the company, the types of software and computer equipment used, and whether a company performs its own accounting or hires outside accounting professionals. The Task Group estimated that the minimum total company fixed costs would be approximately20,000.[36] As also noted above, NECA has proposed a supplemental interstate average schedule disbursement of5,000, that assumes a 25% interstate allocation of those fixed costs.[37]

14. At the outset, we note that NECA's cost estimate appears to be reasonable and no party has questioned the proposed estimate. However, parties do come to differing conclusions regarding the percentage of those estimated costs that should serve as a basis for the one-time disbursement. Of the proposals before us, we have concluded that NECA's proposed 25% allocation to interstate should be used because it closely approximates the separations factor that is applicable to the bulk of relevant exchange carrier expenses.[38] Accordingly the disbursements that have been requested by NECA for the purpose of encouraging average schedule companies to convert to Part 32 are approved.

15. To qualify for the supplemental disbursement, an average schedule company under NECA's proposal would be required to certify to NECA that it had implemented Part 32 accounting and that it intends to maintain such accounts. In our view, however, the carrier should provide a more specific certification about its conversion to Part 32 accounting. Therefore, we have decided to modify the qualification criteria that were proposed by NECA, as follows: to qualify for this supplemental conversion disbursement, an average schedule company shall (1) certify to NECA that it has converted completely to Part 32 accounting; (2) certify to NECA that it will continue to use Part 32 accounting until further order of this Commission.[39]

VI. ORDERING CLAUSES

16. ACCORDINGLY IT IS ORDERED that the petition filed by NECA, as modified herein, IS GRANTED.

17. IT IS FURTHER ORDERED that NECA shall, until further order of this Commission, maintain an accurate, contemporaneous list of all member companies that perform Part 32 accounting pursuant to this, or any subsequent, authorization.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Petition for Approval of Average Schedule Supplemental Disbursement filed by NECA on February 17, 1988 (NECA Petition). *See generally* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules), *Report and Order*, FCC 86-221, (released May 15, 1986), 51 FR 43498 (1986) (hereinafter, " *USOA Conversion Order).*

[2] NECA Petition at 3.

[3] *USOA Conversion Order* at para. 1.

[4] *See id.* at para. 2.

[5] *See* USOA Conversion Order at paras. 9-12, 109-110; NECA Petition at 3. *Accord* ICORE Comments at Section II.

[6] 47 C.F.R. § 69.606(b) (1986).

[7] MTS and WATS Market Structure: Average Schedule Companies, 103 FCC 2d 1017 (1986), *remanded sub. nom. City of Brookings Municipal Telephone Co.* v. *FCC*, 822 F.2d 1153 (D.C. Cir. 1987).

[8] NECA's Proposed Revisions to the Average Schedules for 1988, Memorandum Opinion and Order; 3 FCC Rcd 172 (1988); Extensions of Time for Filing Proposed Revisions to the Average Schedules for 1988, Order DA 88-455, released April 12, 1988.

[9] NECA Petition at 4.

[10] NECA Petition at 5.

[11] *Id.* Under the NECA proposal the disbursement must be claimed in 1988 or 1989 and will only be available to companies that receive settlements based upon the average schedules during both of those years. Companies that converted to the average schedules effective January 1, 1988 will be eligible for the supplemental disbursement only if their implementation costs were incurred after January 1, 1988. *See id.* at 8.

[12] *Id.* at 6.

[13] *Id.* at 6. NECA assumed that a 25% interstate allocator would be applicable to all interstate conversion disbursements. *See* NECA Reply Comments at 2, n.8.

[14] NECA's Part 32 reimbursementschedule is structured so that commonly controlled (*i. e.*, affiliated) companies receive, collectively, one fixed base amount disbursement of5,000 and a settlement per access line that is determined by aggregating the access lines of all additional companies. Thus, two commonly controlled exchange carriers with 1,000 and 4,000 access lines would collectively receive a total of11,700 (*i. e.*,5,000 plus1.50 x 1,000 access lines plus1.30 x 4,000 access lines). *See id.* at 7.

[15] *Id.*

[16] *Id.* at 7.

[17] ICORE, Inc. (ICORE), National Telephone Cooperative Association (NTCA), Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), and the United States Telephone Association (USTA) filed comments in this proceeding.

[18] NTCA Comments at 2 (citing earlier comments in CC Docket 78-196. *See Further Notice of Proposed Rule Making* in CC Docket 78-196, released Jan. 3, 1985, 50 F.R. 1590 (1985)).

[19] *See id.* at 2, NECA Petition at 3.

[20] NTCA Comments at 3, NECA Petition at 8.

[21] *See* NTCA Comments at 4. *See generally* 47 C.F.R. § 69.606(b) (1986).

[22] OPASTCO Comments at 2.

[23] *Id.* at 2. *Accord* NECA Petition at n.1.

[24] USTA Comments at 2.

[25] USTA Comments at 2.

[26] ICORE Comments at Section II.

[27] *Id.* at Section III(3).

[28] ICORE notes that CABS costs are assigned 50% to interstate where both interstate and intrastate CABS bills are rendered, and 100% to interstate where there are no intrastate CABS bills. ICORE Comments at Section III(3).

[29] NECA Reply Comments at 3. *See generally* 47 C.F.R. § 36.381 (1986).

[30] Part 36 of the Commission's rules specifies, for cost companies, the apportionment procedures that determine those portions of Part 32 account balances that are deemed to be interstate. *See generally* 47 C.F.R. §§ 36.1 - 36.741, NECA Reply Comments at 3.

[31] *Id.* at 3.

[32] NECA Petition at 3-4, ICORE Comments at Section I, NTCA Comments at 4, USTA Comments at 2-3. In addition, the managements of average schedule exchange carriers will be able to compare their operating results with other companies on the basis of more consistent accounting data. NTCA Comments at 3.

[33] NECA Petition at 3, ICORE Comments at Section IV, NTCA Comments at 2-3, and USTA Comments at 3.

[34] The Industry Average Schedule Task Group is an extension of the NECA Board of Directors' Average Schedule Development Committee. The Task Group consists of employees of exchange carriers. Representatives of associations, such as USTA, NTCA, OPASTCO, etc., may participate as advisors to the Task Group. *See* NECA Petition at Exhibit A.

[35] NECA Petition at 6.

[36] NECA Petition at 6.

[37] To recognize the range of additional costs for both large and small companies, NECA proposed a variable amount that is a decreasing function of the number of access lines. NECA Petition at 4.

[38] The 1988 Access Tariff Review Plan indicates that the 1988 interstate share of relevant expenses of reporting cost companies will approximate a 25% allocation. *See* 1988 Annual Access Tariff Review Plan, *passim*. See generally, In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 FCC 2d 781, 783-85 (1984), Reconsideration Order, FCC 84-637 (released Dec. 28, 1984). Compare ICORE Comments at Section III(3), supra.

[39] This supplemental disbursement is only available during 1988 and 1989. See note 13, supra and references cited therein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

REM COMMUNICATION — File No. 87818-CL-P-245-A-86

For authority to construct and operate a system in Domestic Public Cellular Radio Telecommunications Service in the Ocala, Florida MSA

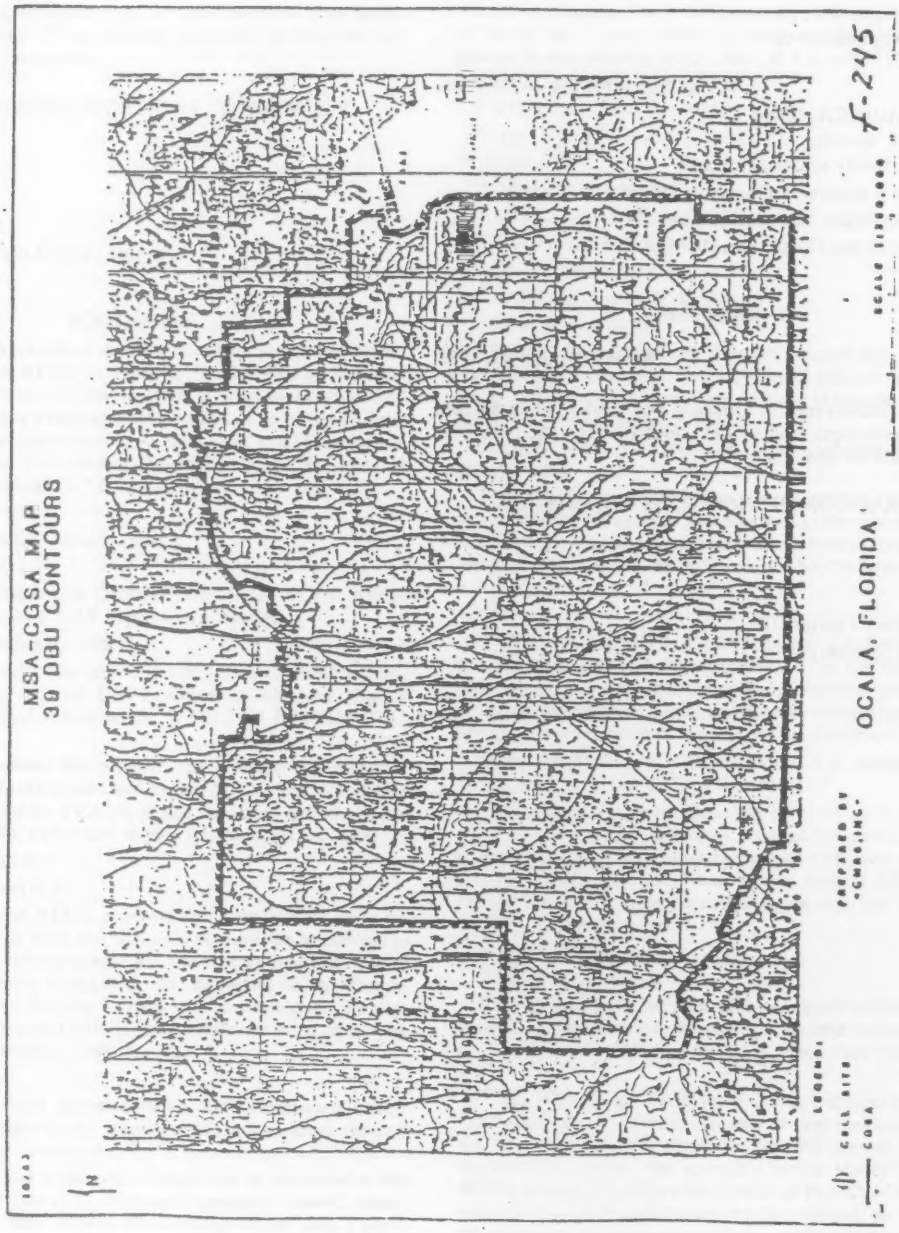
ERRATUM

Released: June 23, 1988

In the Memorandum Opinion and Order, FCC 88-188, in the above-captioned matter, released June 16, 1988, this map should be attached.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service — Transmittal No. 1197

ORDER

Adopted: June 27, 1988; Released: June 28, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On January 22, 1988, the Common Carrier Bureau released an Order suspending and initiating an investigation of a tariff filed by AT&T Communications (AT&T) proposing to introduce Hospitality Network Service (HNS).[1] We found that AT&T's plan to pay commissions for the "0+" calls of HNS subscribers could be an unlawful rebate of tariffed charges in violation of Section 203(c)(2) of the Communications Act, 47 U.S.C. § 203(c)(2), such that suspension and investigation were warranted. On February 26, the Bureau adopted an Order designating issues to be investigated in regard to this service.[2] AT&T subsequently withdrew Transmittal No. 1046 and filed a revised version of HNS under Transmittal No. 1197, currently scheduled to become effective June 28, 1988.

2. This transmittal differs from its predecessor in two ways: (1) references to 0+ traffic are removed from the tariff, and (2) a new requirement is imposed that at least 50 percent of HNS traffic must occur in the non-business day rate period. Under the HNS rate structure, an HNS customer must agree to provide AT&T with at least 4 million minutes of "1+" traffic per month, over one-half of which must be off-peak. The customer is required to pay a monthly recurring charge of360,000, plus a usage sensitive charge of0.09 per minute. The fixed monthly charge plus the 0.09 per minute rate equals0.18 cents per minute at 4 million minutes of traffic. The tariff also contains a provision for an Implementation Period, not to exceed six months, during which the monthly recurring charge is waived and all calls are rated at0.18 per minute. The HNS rate is guaranteed for a year under a rate stability plan and, according to AT&T, represents an approximate 9 percent discount off standard AT&T rates. In order to obtain the0.18 rate, customers must also arrange their premises telephone equipment to insert the AT&T carrier identification code (10732) on each HNS call.

3. On May 9, 1988, Telesphere International, Inc. (Telesphere), US Sprint Communications Company (Sprint) and MCI Telecommunications Corporation (MCI) filed petitions to reject or suspend and investigate Transmittal 1197.

4. Sprint is concerned that the arrangements made by customers in modifying their premises equipment to automatically insert the 10732 prefix will result in 800 traffic being sent to AT&T rather than the local exchange carrier (LEC) for screening. Sprint Petition at 2. It fears that AT&T will block such 800 traffic destined for its competitors.

5. MCI contends that customers initially committing to HNS may not pay the rate stated in the tariff. *See* MCI Petition at 2-3. MCI contends that, under AT&T's Implementation Period provision, HNS customers will be able to acquire the preferential0.18 rate without being obliged to satisfy the360,000 monthly minimum for as long as six months. MCI Petition at 2-3. Thus, MCI argues, AT&T may be recovering as little as half of the yearly minimum of4,320,000 from certain HNS customers, and may not, therefore, recover its costs at all levels of usage. *Id.* at 3.

6. Telesphere alleges that AT&T has made an insufficient showing of competitive necessity, that AT&T has failed to relate the competitors' rates to the rates quoted for the HNS offering, and that HNS will raise the revenue requirements of all other AT&T subsidies, requiring cross-subsidies. Telesphere Petition at 4-11. It also contends that AT&T's requirements of a one-year minimum term and that at least 50 percent of the traffic be off-peak constitute unreasonable customer restrictions, contrary to the FCC's guidelines for optional calling plans. *Id.* at 13-14.

7. AT&T replies that Sprint's concern regarding the possible blocking of 800 calls is misplaced because all calls, including Sprint's 800 calls, will be sent to the LEC end office for screening. Reply at 4-5. Any blocking by a LEC would affect AT&T and other carriers equally, it observes, and therefore Sprint's concern that AT&T may obtain an unfair advantage is unfounded. *Id.*

8. AT&T also contests MCI's claims that the tariff permits AT&T to discriminate and may result in HNS being unprofitable. *Id.* at 6. It asserts that the implementation provision allows only "such flexibility and discretion as is necessary to account for differences among installation intervals that HNS customers will experience." *Id.* at 6-8. AT&T also denies that the implementation provision will affect the financial viability of HNS, noting that while customers are relieved from paying the monthly recurring charge during the transition period, they will pay0.18 per minute for each of the first 4 million minutes rather than the .09 per minute rate which they will pay when they become subject to the monthly recurring charge. *Id.* at 9.

9. In response to Telesphere's objections, AT&T defends its demand projection based on a single customer. It argues that the customer, as the owner of over 100 hotels with wide variations in location and characteristics, provided a representative sample. *Id.* at 11. AT&T also maintains that it has shown that lower "1+" rates are available from other carriers, and that differences between HNS and these services are "beside the point." *Id.* at 13 n.**. It asserts that the competitive necessity test requires only that services be similar, not identical. *Id.* Finally, AT&T defends its requirements that a majority of usage occur off-peak and that customers purchase the service for one year, arguing that these requirements, respectively, encourage efficient use of the network and insure the profitability of the volume discount. *Id.* at 13-14.

10. The Common Carrier Bureau has reviewed AT&T's Transmittal No. 1197, the petitions, and AT&T's reply. We conclude that no compelling arguments have been presented that the tariff proposal is so patently unlawful as to warrant rejection or that an investigation is warranted at this time.

11. Accordingly, IT IS ORDERED that the petitions to reject or suspend and investigate filed against AT&T Communications Tariff F.C.C. No.1, Transmittal No. 1197 by MCI Telecommunications Corporation, US Sprint Communications Company and Telesphere International, Inc., ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service, Transmittal No. 1046, 3 FCC Rcd 975 (1988) (*January 22 Order*).

[2] AT&T Communications Tariff F.C.C. No. 1, Transmittal No. 1046, Order Designating Issues for Investigation, 3 FCC Rcd 1465 (1988) (*Designation* Order).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-214

In the matter of

Reorganization and revision of
Part 87 of the Rules governing the
aviation services.

REPORT AND ORDER

Adopted: June 23, 1988; Released: July 14, 1988

By the Commission:

I. INTRODUCTION

1. In this *Report and Order* we are reorganizing Title 47, Part 87 of the Code of Federal Regulations, 47 C.F.R. Part 87, substantially as proposed in the *Notice of Proposed Rule Making* (*Notice)* in this proceeding, 2 FCC Rcd 4069 (1987). Part 87 governs the aviation radio services. Our primary objectives in this proceeding are to simplify and clarify the rules and to eliminate regulatory barriers where possible to provide more flexibility for aviation communications.

2. Although the new Aviation Services Rules appear to be lengthy, the total body of these rules has been reduced by approximately 30 percent. This reduction was accomplished by eliminating unnecessary rules and improving the organization. Many rules were redundant or obsolete. Others duplicated procedures or technical rules that are contained in other FCC rule parts. Further, the use of easy to read tables and charts in lieu of textual explanations significantly contributed to the reduction in the volume of the rules.

II. BACKGROUND

3. A major review of Part 87 has not been conducted for nearly twenty-five years. Additions and revisions to accommodate technological and operational changes have resulted in a body of rules that can be confusing and difficult to use, particularly for newcomers to aviation communications. Rather than continue to add a series of "fixes," we took the opportunity to look anew at the structure of Part 87. As a result of this review, we adopted the *Notice* in this proceeding proposing a major reorganization and revision of Part 87 to update and simplify the Aviation Services Rules.

4. The *Notice* proposed to replace lengthy text with tables and charts where possible. For example, the *Notice* proposed centralizing all the rules concerning power and emission for the various classes of stations in a single table in Subpart D. Similarly, the *Notice* presented information concerning license application and modification in tabular form. A new combined aviation frequency list in frequency order, providing the frequency use and referencing the appropriate Part 87 subpart was proposed. These format changes were designed to make the rules clearer and easier to use.

5. The *Notice* also proposed a number of substantive changes. The proposed substantive changes to the Aviation Services Rules included a major modification of the Rules governing aeronautical advisory stations (unicoms) to reduce congestion on certain frequencies, expansion of the scope of communications permitted between aircraft and aviation service organizations, and licensing of Civil Air Patrol "Wings" rather than individual stations. These changes were proposed to reduce regulatory burdens on the public and enhance flexibility of aviation communications.

III. DISCUSSION

6. Comments in this proceeding were filed by the Federal Aviation Administration (FAA); Rockwell International Corporation (Rockwell); Chevron Information Technology Co., ERA Helicopters, Inc., Mobil Exploration and Producing U.S. Inc., Tennessee Gas Pipe Line Company, and Transcontinental Gas Pipe Line Corporation (Chevron *et al.*); Aerospace & Flight Test Radio Coordinating Council (AFTRCC); Aeronautical Radio, Inc. (ARINC); the Helicopter Association International (HAI); Mutt Baker, Inc. (Baker); Jan Shaffer, Ohio Bell Flight Operations (Shaffer); Ben E. Brodie (Brodie); Warner-Lambert Company (Warner-Lambert); the Wichita Airport Authority (Wichita) and Airport Owners and Pilots Association (AOPA). Reply comments were filed by ARINC.

7. The comments were generally supportive of our effort to simplify and reorganize the Aviation Service Rules. Most of the commenters limited their specific comments to proposed substantive changes in particular rules. For example, Rockwell's comments were focused on the technical requirements contained in Subpart D of the new rules, while the FAA's comments touched on many specific sections throughout the rules and were primarily editorial in nature. Many of the commenters addressed the proposed changes in the rules governing unicoms. Because the proposed changes in the unicom rules engendered most of the specific comments and provided the only major controversy, the history of this important safety service and the rationale for the original changes are discussed in detail below. The remaining issues and a summary of the reorganization by subpart are discussed thereafter.

A. Unicoms

8. Aeronautical advisory stations (unicoms) provide for air-ground communications primarily between general aviation aircraft and airport facilities.[1] Communications are limited to the necessities of safe and expeditious operation of aircraft such as runway conditions, fuel availability, dispatching, wind conditions, weather, and the like. On a secondary basis, communications may be transmitted if they pertain to the efficient portal-to-portal transit of a flight, such as requests for ground transportation, or for lodging. At airports that have a control tower or FAA flight service station (FSS), however, unicoms may not transmit information concerning runway conditions, wind or weather information. Unicoms must provide service to aircraft without discrimination and are required to be impartial with respect to ground services available at the

airport. These stations may not be used for air traffic control (ATC) purposes.[2] Typically, the licensee of the unicom is the airport owner/operator or an organization that in so that in some capacity provides services to the general Aviation community utilizing the airport.

9. **One unicom per airport restriction.** At many uncontrolled airports the unicom is the only means of communication between the airport and aircraft in flight. When the aeronautical advisory service was first established in 1950, only one station was authorized at each airport. This restriction was considered necessary for reasons of flight safety and potential interference. Aircraft approaching and departing any uncontrolled airports monitor the advisory frequency and "self-announce" their position and intentions for the benefit of other aircraft in the area. This aural alerting system is an essential supplement to the basic visual requirement for pilots to see and avoid other aircraft. Further, the possibility of contradictory information being issued to aircraft or interference among stations on an airfield supported the conclusion that more than one station should not be authorized.

10. In the *Report and Order* in PR Docket No. 83-990 [3] the Commission relaxed the one unicom per airport restriction at the approximately 500 airports that have control towers. Although the Commission considered this restriction critical at uncontrolled airports, it felt that safety would not be affected by relaxing the rule at controlled airports because the control tower is responsible for safety-related information. Because of the professionalism of the aviation community, the Commission did not expect significant interference problems. This deregulatory action has in fact benefited both the flying public utilizing these airports and local aviation service organizations. This action did not compromise safety of flight. The aviation community has benefited from the convenience of direct communications between aircraft and aviation service organizations at airports. No one has reported any significant interference problems as a result of this relaxation in the rules.

11. Because of the benefits derived from the elimination of the one unicom per airport restriction at airports with control towers, we proposed to relax the rules further by eliminating the one unicom per airport restriction at airports where FSS[4] are located. We expect the aviation community using these airports to realize the same benefits. Because unicoms must not transmit information pertaining to conditions of runways, wind conditions or weather information at airports with FSS, and the FAA recommends that aircraft flying into or out of these airports monitor the FSS frequency as a common traffic advisory frequency (CTAF), this action will not compromise safety.[5]

12. Although most of the comments generally supported the proposed revisions to Part 87, none specifically commented on our proposal to relax further the one unicom per airport restriction. We continue to believe that the elimination of this restriction at airports where an FSS is located will benefit both the flying public and local aviation service organizations. The availability of direct communications between aircraft and all service organizations at such airports would be more convenient for the aviation community but would not impair safety, given that air traffic advisory broadcasts will always occur on the FSS CTAF. Therefore, we are amending the Rules as proposed to eliminate the one unicom per airport restriction at airports with FSS.

13. **Frequency assignments at uncontrolled airports and heliports.** Over the years, complaints to the Commission of congestion on the frequencies available to unicoms serving uncontrolled airports and heliports, particularly those located near large urban areas, have been common. In 1977, the Commission attempted to solve this problem by adding the frequencies 122.700 and 123.000 MHz to the then single available frequency 122.800 MHz.[6] It considered the assignment of 100 kHz spaced channels to be essential at uncontrolled public airports to insure that all radio-equipped aircraft would have access to the station. In an effort to alleviate further the heavy channel loading on these three frequencies, the Commission made the frequencies 122.725 and 122.750 MHz available on an optional basis to unicom stations at uncontrolled airports not open to the public. It also made the frequency 122.975 MHz available for advisory communications with aircraft at altitudes greater than 10,000 feet, and dedicated two additional frequencies for use at heliports. In 1984, the Commission attempted further to improve unicom communications by making the frequencies 122.725 and 122.975 MHz available for assignment at all uncontrolled airports.[7] The frequency 122.750 MHz continued to be available for air-to-air communications but was no longer assignable to unicoms at private airports. The 39 existing licensees were grandfathered.[8]

14. Although these changes have helped, congestion on the unicom frequencies assigned at uncontrolled airports, particularly near large urban areas, continues to be a problem. The FAA and the Commission receive frequent complaints. Most applicants for unicoms request and are granted one of the three "100 kHz spaced channels." Few request a 25 kHz spaced channel. Today, however, nearly all new aircraft radios are capable of operating on 25 kHz spaced channels. Many aircraft owners have installed such radio equipment to take advantage of the added communications capabilities and services or in recognition of the fact that such equipment will soon be necessary. The provisions of the 1979 World Administrative Radio Conference and the Commission's Rules require that in 1990, all aircraft radio stations be equipped for operation on 25 kHz spaced channels.[9]

15. In the *Notice*, therefore, we proposed a number of changes to improve unicom service for the flying public. First, we proposed to eliminate the restriction that the frequencies 123.050 and 123.075 MHz be assigned only to unicoms at heliports and to permit these frequencies to be used at uncontrolled airports as well. Second, we proposed to make greater use of 25 and 50 kHz spaced channels by making assignments to new unicoms based on the greatest possible geographical separation between like frequency assignments.[10] Third, we proposed that beginning in 1990, we would review unicom renewal applications for geographical separation between like frequency assignments. Where appropriate, we would assign a different frequency.

16. HAI and Warner-Lambert oppose the elimination of the exclusive assignment of two frequencies to unicoms at heliports. HAI states that exclusive use of two unicom frequencies is necessary for flight safety. It argues that the correct response to reduce congestion is to assign additional frequencies. HAI Comments at 1. Warner-Lambert feels that the New York City area should be excluded from any pooling of heliport and airport unicom frequencies. Warner-Lambert states that the heliport unicom frequencies are presently well used. Warner-Lambert Comments at 1.

17. AOPA supports the elimination of the exclusive assignment of two frequencies to unicoms at heliports, arguing that pooling the two groups of frequencies would undoubtedly reduce congestion and enhance safety at many airports. AOPA Comments at 1. Baker, Brodie and Wichita also generally support all the proposals designed to reduce congestion on unicom frequencies. Baker Comments at 1; Brodie Comments at 1; Wichita Comments at 1.

18. Eliminating the exclusive assignment of two frequencies to unicoms at heliports and permitting shared use of these frequencies with unicoms at uncontrolled airports would improve unicom communications for all users. This would allow greater separation between landing areas with the same unicom frequency assignment. It would also make additional frequencies available to unicoms at heliports. In some regions of the country where helicopter operations are particularly heavy, congestion on unicom frequencies at heliports should be reduced. Accordingly, we are amending the Rules as proposed to eliminate the exclusive assignment of 123.050 and 123.075 MHz to unicoms at heliports.

19. AOPA strongly supports the proposals to assign unicom frequencies based on geographical separation between like frequency assignments. AOPA states that this would greatly reduce unicom frequency congestion currently experienced at many locations nationwide. Wherever possible, however, AOPA recommends that 25 kHz spaced channels be assigned at the larger metropolitan airports. Aircraft not equipped to operate on these channels are more likely to be based at smaller airports. Additionally, AOPA urges that ten additional unicom frequencies be made available to the aviation community. AOPA Comments at 1. Baker, Brodie and Wichita also support these proposals to reduce congestion. Baker, however, states that he has some reservations regarding the expansion in the use of 25 kHz spaced channels because many pilots like himself only have aircraft radios with 50 kHz spaced channels. Baker Comments at 1. Wichita supports the allocation of an additional ten unicom frequencies. Wichita Comments at 1.

20. Assigning unicom frequencies based on geographical separation will reduce congestion in many areas of the nation. By initially making such assignments only to new unicom stations, and then in 1990 reviewing renewal unicom applications for maximum geographical separation, the impact on unicom licensees and aircraft operators will be minimized. As AOPA suggests, the impact on the aviation community will be minimized further by assigning 25 kHz spaced channels to larger airports whenever possible. Additionally, as stated, the international Radio Regulations as well as the Commission's Rules require that on January 1, 1990, all aircraft radio stations be equipped for operation on 25 kHz spaced channels. These proposed changes in the method used to assign unicom frequencies appear to represent the most efficient and effective way to utilize the scarce resources commonly available. Accordingly, we are amending the rules and unicom frequency assignment policies as proposed.

21. As stated, AOPA and Wichita urged that ten additional channels be made available for assignment to unicoms. Although we agree that ten additional frequencies would greatly improve unicom communications throughout the nation, no additional spectrum is currently available nor were specific suggestions offered. We note, however, that in 1990, the one MHz between 136 and 137 MHz will be made available to the aviation community. Although it is beyond the scope of this proceeding, we will eventually need to initiate a separate proceeding regarding the allocation of this spectrum. Possibly, additional unicom frequencies could be made available from spectrum available due to movement of other aviation services to the 136-137 MHz band.

B. Technical Requirements

22. Rockwell pointed out that in our *Notice* we inadvertently omitted some technical rules. Rockwell Comments at 1. We have restored those rules in this *Report and Order*. Rockwell also recommended that we abandon our proposal to consolidate all power limitations into one table. Rockwell Comments at 1. The existing rules list the power limitations within the text of the appropriate subparts. Rockwell noted, however, that there currently are no power limitations on some types of equipment. We believe that power limitation guidance must be included in the rules. Therefore, we are consolidating as proposed all the power limitation rules in one table. We are revising the proposed maximum power limitation of certain types of equipment to resolve the concerns raised by Rockwell. No currently authorized equipment will be adversely affected by these actions.

C. Frequency Coordination

23. The FAA suggested in its comments that a paragraph be added to Part 87 requiring that the Commission coordinate with the FAA all applications for unicoms, multicoms and en route stations on non-Government frequencies. FAA Comments at 2. The ARINC took exception to the FAA's proposal and urged the Commission not to delegate its authority in this manner. ARINC Reply Comments at 2. Although we understand ARINC's concern that the Commission maintain its regulatory role concerning non-Government spectrum, we intend to continue coordinating these assignments with the FAA as we have done in the past. In fact, in our effort to improve unicom service by using the 25 kHz channel spacing through geographical separation, we will be working very closely with the FAA. Codification of the informal coordination procedures that now take place between the two agencies is not required. Therefore, the language proposed by the FAA is not included in the rules.

D. Summary of Reorganization

24. Other than the changes discussed above, the new Part 87 adopts the organizational structure and substantive changes proposed in the *Notice*, except where noted below. In the following paragraphs, a description of each new subpart is presented and any significant changes are briefly discussed. Unless specifically addressed above or in the individual paragraphs that follow, no one filed substantive comments concerning that subpart. Subparts A-E are of general applicability while Subparts F-S apply to specific classes of stations.

25. **Subpart A - General Information.** This subpart contains a description of the basis and purpose of the regulations governing the aviation services and definitions of terms used throughout Part 87. Definitions not unique to the aviation services and that are contained in Part 2 of the Rules have been deleted. Some definitions have been combined. Definitions that contained the term "airdrome" have been changed to reflect use of the more generally

accepted term "airport." Additionally, a new section has been added that lists other rule parts pertinent to Part 87, such as Part 1 which contains the Commission's general rules of practice and procedure. The regulations in the old Subpart A dealing with "Applications and Licenses" and "Developmental Operation" have been moved to new Subpart B.

26. **Subpart B - Applications and Licenses.** This subpart consists of the application and license requirements for stations in the aviation services. Many of its rules have been simplified and clarified. Two sections containing information on standard forms to be used have been combined into one table. The information concerning license modifications has been put into a table as well. We have removed the requirement that licensees notify the nearest Commission Field Office of temporary or permanent discontinuance of operation. We believe this deregulatory action will remove an unnecessary burden from the public as well as the Commission. The seven sections concerning developmental operations have been consolidated into a single section and simplified. New language has been added concerning developmental stations, type accepted equipment, and operation during emergencies. Existing regulations concerning "Operating Requirements" and "Technical Requirements" have been moved to new Subparts C and D, respectively.

27. **Subpart C - Operating Requirements and Procedures.** This subpart contains rules concerning operating requirements, operator requirements and operating procedures. These regulations were in Subpart A, under "Operating Requirements". All references to Emergency Locator Transmitters (ELTs) have been moved into Subpart F, Aircraft stations. No substantive changes were made to the original rules now contained in this subpart.

28. **Subpart D - Technical Requirements.** The rules in this subpart relate to the technical specifications for stations. These regulations have been rewritten to simplify, clarify, and update the rules. For example, the rules applicable to power and emission appear in a single table.

29. **Subpart E - Frequencies.** A complete list of frequencies available for assignment in the Aviation Services is contained in tabular form in this subpart. The first column contains the frequency or frequency band. The second column contains the symbols of the subpart(s) with additional regulations applicable to frequency assignment and usage. The third column contains the symbol(s) of the class(es) of station(s) to which the frequency is assignable. To be consistent with other government agencies we have used symbols contained in the National Telecommunications and Information Administration's Manual of Regulations and Procedures for Federal Radio Frequency Management. The fourth column contains remarks to clarify frequency use or dual use. The latter column is especially useful in the case of the aeronautical enroute stations where many frequencies are available in specific geographical areas.

30. **Subpart F - Aircraft Stations.** This subpart sets forth the rules concerning radio equipment and operations onboard aircraft. Many of the rules are now contained in Subpart B. Several such rules, however, including those concerning public correspondence equipment and operations have been revised and clarified. The new Subpart F includes those frequencies available to aircraft stations. Frequencies shared with non-Government aeronautical land stations have been placed in the list of frequencies contained in new Subpart E. Additionally, the rules concerning ELTs have been consolidated in this subpart.

31. **Subpart G - Aeronautical Advisory Stations.** The unicom rules contained in this subpart have been significantly revised, as discussed above. For a detailed discussion of these changes, see paragraphs 8 through 21.

32. **Subpart H - Aeronautical Multicom Stations.** This subpart replaces old Subpart D. Multicom stations are used for communications with aircraft concerning activities of a temporary, seasonal or emergency nature. Multicoms are sometimes authorized to relay ATC information where there is no unicom service available. Although the rules for multicoms have not been changed substantively, the language has been simplified.

33. **Subpart I - Aeronautical Enroute and Aeronautical Fixed Stations.** This subpart replaces former Subparts E and L. Aeronautical enroute stations are used to communicate operational control messages relating to the safe, efficient, and economical operation of aircraft. Aeronautical fixed stations provide non-public point-to-point communications service pertaining to safety, regularity, and economy of flight where adequate land line facilities are unavailable. The two classes of stations have been combined because aeronautical fixed stations are licensed only to enroute station licensees. Chevron and ARINC recommended that provisions for digital data transmissions in the enroute service be retained as currently authorized in footnote 6 of Section 87.67(b). Chevron Comments at 3-4; ARINC Comments at 4-5. We have revised footnote 5 of new Section 87.135 to provide for such digital data transmissions as are currently authorized. Additionally, ARINC recommended that VHF enroute stations be permitted to use a maximum power of one kilowatt because some "extended range" VHF enroute stations providing communications in control areas should be permitted to continue to do so. ARINC Reply Comments at 5-6. The proposed maximum power of 200 watts for VHF enroute stations is generally more than sufficient for these types of stations. In air-to-ground communications, distances are determined more by aircraft altitude than by transmitting power (line-of-sight" paths). Existing stations authorized to operate at higher power may, however, continue to do so. New stations seeking to operate at a maximum power above 200 watts will be authorized on a case-by-case basis.

34. **Subpart J - Flight Test Stations.** This subpart contains the rules that were previously located in Subpart G. Flight test stations are used by manufacturers of aircraft or major aircraft components and educational institutions for communications during flight test evaluations. AFTRCC recommended that the field study option contained in proposed Section 87.305(a) be deleted to conform the flight test station rules to actual practice. AFTRCC Comments at 2-3. The AFTRCC notes that historically the field studies have not been used in lieu of frequency coordination. Rather all applicants submit statements from the frequency coordinator (AFTRCC) under the provision of Section 87.305(c)(1). AFTRCC further points to the fact that the telemetry bands are shared with Government users who do not utilize or consider reports based on field studies. AFTRCC Comments at 3. We agree with AFTRCC that the field study option is never utilized and are therefore removing it. We are deleting the field study provisions contained in proposed Section 87.305 from the rules.

35. **Subpart K - Aviation Support Stations.** This subpart consolidates, under the heading "aviation support stations," stations currently used to support (1) pilot flight training, (2) coordination of soaring activities, (3) coordination of free ballooning activities, and (4) coordination between aircraft and aviation service organizations concerning available ground services. The first three functions were licensed as aviation instructional stations while the fourth was licensed as an aeronautical utility mobile station. We proposed to expand the scope of communications permitted between aircraft and aviation service organizations on the frequencies 122.775 and 122.850 MHz. The old rules only permit communications between aviation service organizations and aircraft that are stationary on the airport. Permitting aviation service organizations to communicate with aircraft in the air as well as on the ground will provide for more efficient and convenient aircraft operations and reduce congestion on unicom frequencies. The FAA's designation of a common traffic advisory frequency for all airports will permit expansion of the scope of service of these stations without affecting safety of flight in the vicinity of uncontrolled airports.

36. **Subpart L - Aeronautical Utility Stations.** This subpart sets forth the rules concerning stations in vehicles operating on airport runways, taxiways and other areas used for taxiing, takeoff and landing of aircraft. The stations assist in the safe movement of vehicles operating on the airport. The old rules in Subpart J, Aeronautical Utility Mobile Stations, have been reorganized and clarified in Subpart L. We are making available the frequencies 122.775 MHz and 122.850 MHz to the new category of aviation support stations and are expanding the scope of service of these two frequencies to permit air-ground communications relating to aircraft servicing. This will allow any number of aviation support stations to communicate with aircraft in the local area concerning available ground services. The rules governing communications between aviation service organizations and aircraft stationary on airport ramp areas have been moved to new Subpart K, Aviation Support Stations.

37. **Subpart M - Aeronautical Search and Rescue Stations.** This subpart consists of the rules previously found in Subpart K. Aeronautical search and rescue stations are used for communications with aircraft and other search and rescue stations during actual or training search and rescue operations. A new section on eligibility has been added to reflect existing licensing practices. The language has been simplified and clarified.

38. **Subpart N - Emergency Communications.** This subpart has been significantly reorganized and reduced in size. The emergency communications rules formerly in Subpart Q contain information duplicated from a number of emergency plans that generally affect the Aviation Services. Although the plans continue in force, our rules have been reduced to the information necessary for Commission licensees regarding the use of stations in the Aviation Services in emergency situations declared by local, state and federal authorities.

39. **Subpart O - Airport Control Tower Stations.** This subpart sets out the rules that were contained in Subpart I, Airdrome Control Stations. These stations are licensed to provide ATC communications in the vicinity of an airport where there is no federal control tower. We have made a nomenclature change by deleting the term "airdrome" and replacing it with the more common "airport." We have also changed "airdrome control tower stations" to "control towers." These non-substantive modifications better reflect today's usage.

40. **Subpart P - Operational Stations.** This subpart sets forth the rules previously contained in Subpart M. Operational stations are used to provide link or control circuits for other aeronautical operations. We have eliminated the nomogram charts associated with TV Channels 4 and 5 and verbalized the parameters for locating operational fixed stations. The rules have been simplified and clarified but otherwise remain unchanged.

41. **Subpart Q - Stations in the Radiodetermination Service.** This subpart essentially incorporates the material formerly contained in Subpart N, Radionavigation Land Stations, and Subpart O, Radionavigation Land Test Stations. These stations generally provide navigational information for aircraft.

42. **Subpart R - Civil Air Patrol Stations.** This subpart simplifies and clarifies the rules governing the use of Civil Air Patrol stations for training, operational and emergency activities of the Civil Air Patrol. Additionally we are revising the method used to license Civil Air Patrol stations. Currently over 24,000 transmitters are licensed to individual units of the Civil Air Patrol under Subpart O of the Rules. We proposed to grant a fleet license to each regional Wing of the Civil Air Patrol in lieu of issuing individual station licenses. This action would reduce the number of licenses issued to the Civil Air Patrol to approximately 60. This will not only reduce paperwork for the Civil Air Patrol and the Commission, but will also increase the flexibility of Civil Air Patrol units to respond to changing communications requirements. Concurrent with the release of this *Report and Order*, we will initiate work on a revised CAP application form, FCC Form 480, to reflect the new licensing procedures. In the interim, we will continue to process applications for CAP stations using the existing forms.

43. **Subpart S - Automatic Weather Observation Stations.** This subpart replaces Subpart R. We proposed that automatic weather observation stations located at high activity airports with part-time control towers be allowed to provide automatic terminal information service during the hours of control tower operation. An automatic weather observation station consists of various sensors, a processor, a voice synthesizer and a transmitter that relay local real-time weather data directly to pilots via the voice portion of a local aeronautical radionavigation aid. Automatic terminal information service is the continuous broadcast of pre-recorded information pertaining to the local airport terminal area. This service is usually provided by the FAA to reduce control tower frequency congestion by automating the transmission of essential but routine information.

44. When approved by the FAA, automatic weather observation stations may provide automatic terminal information service while the control tower is in operation. We will allow existing and future automatic weather observation stations to be operated in this dual mode without notification to the Commission.

IV. CONCLUSION

45. For the reasons stated above, we believe that this revision of Part 87 will significantly improve, simplify and clarify the requirements for licensing and operating non-federal aviation radio stations. Appendix A contains the

new Part 87. Appendix B is a cross reference table that lists each rule contained in the former Part 87 in the first column, its subpart in the second column, the corresponding new rule in the third column, the new rule title in the fourth column, the subpart where the new rule is located in the fifth column, and a one-word description of any changes in the sixth column. Appendix B should provide a simple method for interested parties to determine quickly the new location of any existing rule and the general nature of any changes.

A. Regulatory Flexibility Final Analysis

46. *Reason for action*. This action reorganizes and improves the Rules applicable to the Aviation Services contained in Part 87 of Title 47 of the *Code of Federal Regulations*.

47. *Issues raised by the public in response to initial regulatory flexibility analysis*. None.

48. *Significant alternatives*. An alternate regulatory approach considered was making the substantive changes but leaving the rules essentially in their current format. A complete rewrite of Part 87 offers us the opportunity to reorganize and clarify all the rules, instead of just addressing the substantive issues in rule making proceedings. The revised rules are much clearer, easier to use and shorter than the old ones. As these changes are generally non-substantive, they will have no impact on small businesses.

B. Paperwork Reduction Act

49. The rule changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden that the Commission imposes on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

C. Ordering clauses

50. Accordingly, IT IS ORDERED, under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended 47 U.S.C. 154(i) and 303(r), that the Commission's Rules ARE AMENDED as set forth in Appendix A below, effective **August 29, 1988.** .

51. IT IS FURTHER ORDERED that a copy of this Report and Order be sent to the Chief Counsel for Advocacy of the Small Business Administration.

52. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX A

Parts 1 and 87 of Chapter 1 of Title 47 of the *Code of Federal Regulations* are amended read as follows:

A. *Part 1 - PRACTICE AND PROCEDURE*

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.962 is amended by revising paragraph (a)(5) to read as follows:

§ 1. 962 Public notice of acceptance for filing ; petitions to deny applications of specified categories.

(a) * * *

(5) Airport control tower stations.

* * * * *

B. *Part 87 - AVIATION SERVICES*

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156 301-609.

2. Part 87 is revised in its entirety to read as follows:

PART 87

SUBPART A - GENERAL INFORMATION

§ 87.1 Basis and purpose
§ 87.3 Other applicable rule parts
§ 87.5 Definitions

SUBPART B - APPLICATIONS AND LICENSES

§ 87.17 Scope
§ 87.19 Basic eligibility
§ 87.21 Standard forms to be used
§ 87.23 Supplemental information required
§ 87.25 Filing of applications
§ 87.27 License term
§ 87.29 Partial grant of application
§ 87.31 Changes during license term
§ 87.33 Transfer of aircraft station license prohibited
§ 87.35 Cancellation of license
§ 87.37 Developmental license
§ 87.39 Equipment acceptable for licensing

§ 87.41 Frequencies
§ 87.43 Operation during emergency
§ 87.45 Time in which station is placed in operation
§ 87.47 Application for a portable aircraft station license

SUBPART C - OPERATING REQUIREMENTS AND PROCEDURES

OPERATING REQUIREMENTS
§ 87.69 Maintenance tests
§ 87.71 Frequency measurements
§ 87.73 Transmitter adjustments and tests
§ 87.75 Maintenance of tower marking and control equipment
§ 87.77 Availability for inspections
§ 87.79 Answer to notice of violation

OPERATOR REQUIREMENTS
§ 87.87 Classification of operator licenses and endorsements.
§ 87.89 Minimum operator requirements
§ 87.91 Operation of transmitter controls

OPERATING PROCEDURES
§ 87.103 Posting station license
§ 87.105 Availability of operator permit or license
§ 87.107 Station identification
§ 87.109 Station logs
§ 87.111 Suspension or discontinuance of operation

SUBPART D - TECHNICAL REQUIREMENTS
§ 87.131 Power and emissions
§ 87.133 Frequency stability
§ 87.135 Types of emission
§ 87.137 Bandwidth of emission
§ 87.139 Emission limitations
§ 87.141 Modulation requirements
§ 87.143 Transmitter control requirements
§ 87.145 Acceptability of transmitters for licensing
§ 87.147 Type acceptance of equipment

SUBPART E -- FREQUENCIES
§ 87.169 Scope
§ 87.171 Class of station symbols
§ 87.173 Frequencies

SUBPART F - AIRCRAFT STATIONS
§ 87.185 Scope of Service
§ 87.187 Frequencies
§ 87.189 Requirements for aircraft equipment used for public correspondence
§ 87.191 Foreign aircraft stations

Emergency Locator Transmitters
§ 87.193 Scope of Service
§ 87.195 Frequencies
§ 87.197 ELT test procedures

SUBPART G - AERONAUTICAL ADVISORY STATIONS (UNICOMs)
§ 87.213 Scope of service
§ 87.215 Supplemental eligibility
§ 87.217 Frequencies

SUBPART H - AERONAUTICAL MULTICOM STATIONS
§ 88.237 Scope of service
§ 87.239 Supplemental eligibility
§ 87.241 Frequencies

SUBPART I - AERONAUTICAL ENROUTE AND AERONAUTICAL FIXED STATIONS

AERONAUTICAL EN ROUTE STATIONS
§ 87.261 Scope of service
§ 87.263 Frequencies
§ 87.265 Administrative communications

AERONAUTICAL FIXED STATIONS
§ 87.275 Scope of Service
§ 87.277 Supplemental eligibility
§ 87.279 Frequencies

SUBPART J - FLIGHT TEST STATIONS
§ 87.299 Scope of service
§ 87.301 Supplemental eligibility
§ 87.303 Frequencies
§ 87.305 Frequency coordination
§ 87.307 Cooperative use of facilities

SUBPART K - AVIATION SUPPORT STATIONS
§ 87.319 Scope of service
§ 87.321 Supplemental eligibility
§ 87.323 Frequencies
§ 87.325 Nonexclusivity of frequency assignments

SUBPART L - AERONAUTICAL UTILITY STATIONS
§ 87.345 Scope of service.
§ 87.347 Supplemental eligibility.
§ 87.349 Frequencies.
§ 87.351 Frequency change.

SUBPART M -- AERONAUTICAL SEARCH AND RESCUE STATIONS
§ 87.371 Scope of service
§ 87.373 Supplemental eligibility
§ 87.375 Frequencies

SUBPART N - EMERGENCY COMMUNICATIONS

§ 87.393 Scope of service

§ 87.395 Plan for the Security Control of Air Traffic Navigation Aids

(Short Title: SCATANA).

§ 87.397 Emergency operations

SUBPART O -- AIRPORT CONTROL TOWER STATIONS

§ 87.417 Scope of service

§ 87.419 Supplemental eligibility

§ 87.421 Frequencies

§ 87.423 Hours of operation

§ 87.425 Interference

SUBPART P -- OPERATIONAL FIXED STATIONS

§ 87.445 Scope of service

§ 87.447 Supplemental eligibility

§ 87.449 Frequencies

§ 87.451 Licensing limitations

SUBPART Q -- STATIONS IN THE RADIODETERMINATION SERVICE

§ 87.471 Scope of service

§ 87.473 Supplemental eligibility

§ 87.475 Frequencies

§ 87.477 Condition of grant for radionavigation land stations

§ 87.479 Harmful interference to radionavigation land stations

§ 87.481 Unattended operation of domestic radiobeacon stations

SUBPART R -- CIVIL AIR PATROL STATIONS

§ 87.501 Scope of service

§ 87.503 Supplemental eligibility

§ 87.505 Frequencies

SUBPART S -- AUTOMATIC WEATHER OBSERVATION STATIONS

§ 87.525 Scope of service

§ 87.527 Supplemental eligibility

§ 87.529 Frequencies

SUBPART A - GENERAL INFORMATION

§ 87. 1 Basis and purpose.

This section contains the statutory basis and provides the purpose for which this part is issued.

(a) *Basis* : The rules for the aviation services in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission (Commission) to regulate radio transmission and to issue licenses for radio stations. These rules conform with applicable statutes and international treaties, agreements and recommendations to which the United States is a party. The most significant of these documents are listed with the short title appearing in parentheses:

Communications Act of 1934, as amended – (Communications Act)

International Telecommunication Union Radio Regulations, in force for the United States – (Radio Regulations)

The Convention on International Civil Aviation – (ICAO Convention)

(b) *Purpose* : This part states the conditions under which radio stations may be licensed and used in the aviation services. These rules do not govern U.S. Government radio stations.

§ 87. 3 Other applicable rule parts.

Other applicable CFR Title 47 parts include:

(a) Part 0 contains the Commission's organization and delegations of authority. Part 0 also lists Commission publications, standards and procedures for access to Commission records and location of Commission monitoring stations.

(b) Part 1 contains rules of practice and procedure for license applications adjudicatory proceedings, rule making proceedings, procedures for reconsideration and review of the Commission's actions, provisions concerning violation notices and forfeiture proceedings, and the requirements for environmental impact statements.

(c) Part 2 contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning marketing of radio frequency devices, and for obtaining equipment authorization.

(d) Part 13 contains information and rules for the licensing of commercial radio operators.

(e) Part 17 contains requirements for construction, marking and lighting of antenna towers.

(f) Part 80 contains rules for the maritime services. Certain maritime frequencies are available for use by aircraft stations for distress and safety, public correspondence and operational communications.

§ 87. 5 Definitions.

Aeronautical advisory station (unicom). An aeronautical station used for advisory and civil defense communications primarily with private aircraft stations.

Aeronautical enroute station. An aeronautical station which communicates with aircraft stations in flight or other aeronautical enroute stations.

Aeronautical fixed service. A radiocommunication service between specified fixed points provided primarily for the safety of air navigation and for the regular, efficient and economical operation of air transport. A station in this service is an aeronautical fixed station.

Aeronautical mobile service. A mobile service between aeronautical stations and aircraft stations, or between aircraft stations, in which survival craft stations may also participate; emergency position-indicating radiobeacon stations may also participate in this service on designated distress and emergency frequencies.

Aeronautical multicom station. An aeronautical station used to provide communications to conduct the activities being performed by, or directed from, private aircraft.

Aeronautical radionavigation service. A radionavigation service intended for the benefit and for the safe operation of aircraft.

Aeronautical search and rescue station. An aeronautical station used for communication with aircraft and other aeronautical search and rescue stations pertaining to search and rescue activities with aircraft.

Aeronautical station. A land station in the aeronautical mobile service. In certain instances an aeronautical station may be located, for example, on board ship or on a platform at sea.

Aeronautical utility mobile station. A mobile station used on airports for communications relating to vehicular ground traffic.

Air carrier aircraft station. A mobile station on board an aircraft which is engaged in, or essential to, the transportation of passengers or cargo for hire.

Aircraft station. A mobile station in the aeronautical mobile service other than a survival craft station, located on board an aircraft.

Airport. An area of land or water that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.

Airport control tower (control tower) station. An aeronautical station providing communication between a control tower and aircraft.

Automatic weather observation station. A land station located at an airport and used to automatically transmit weather information to aircraft.

Aviation services. Radiocommunication services for the operation of aircraft. These services include aeronautical fixed service, aeronautical mobile service, aeronautical radiodetermination service, and secondarily, the handling of public correspondence on frequencies in the maritime mobile and maritime mobile satellite services to and from aircraft.

Aviation service organization. Any business firm which maintains facilities at an airport for the purposes of one or more of the following general aviation activities: (i) aircraft fueling; (ii) aircraft services (e.g. parking, storage, tie-downs); (iii) aircraft maintenance or sales; (iv) electronics equipment maintenance or sales; (v) aircraft rental, air taxi service or flight instructions; and (vi) baggage and cargo handling, and other passenger or freight services.

Aviation support station. An aeronautical station used to coordinate aviation services with aircraft and to communicate with aircraft engaged in unique or specialized activities. (*See* Subpart K)

Civil Air Patrol station. A station used exclusively for communications of the Civil Air Patrol.

Emergency locator transmitter (ELT). A transmitter of an aircraft or a survival craft actuated manually or automatically that is used as an alerting and locating aid for survival purposes.

Emergency locator transmitter (ELT) test station. A land station used for testing ELTs or for training in the use of ELTs.

Flight test aircraft station. An aircraft station used in the testing of aircraft or their major components.

Flight test land station. An aeronautical station used in the testing of aircraft or their major components.

Glide path station. A radionavigation land station which provides vertical guidance to aircraft during approach to landing.

Instrument landing system (ILS). A radionavigation system which provides aircraft with horizontal and vertical guidance just before and during landing and, at certain fixed points, indicates the distance to the reference point of landing.

Instrument landing system glide path. A system of vertical guidance embodied in the instrument landing system which indicates the vertical deviation of the aircraft from its optimum path of descent.

Instrument landing system localizer. A system of horizontal guidance embodied in the instrument landing system which indicates the horizontal deviation of the aircraft from its optimum path of descent along the axis of the runway or along some other path when used as an offset.

Land station. A station in the mobile service notintended to be used while in motion.

Localizer station. A radionavigation land station which provides horizontal guidance to aircraft with respect to a runway center line.

Marker beacon station. A radionavigation land station in the aeronautical radionavigaton service which employs a marker beacon. A marker beacon is a transmitter which radiates vertically a distinctive pattern for providing position information to aircraft.

Mean power (of a radio transmitter). The average power supplied to the antenna transmission line by a transmitter during an interval of time sufficiently long compared with the lowest frequency encountered in the modulation taken under normal operating conditions.

Microwave landing system. An instrument landing system operating in the microwave spectrum that provides lateral and vertical guidance to aircraft having compatible avionics equipment.

Mobile service. A radiocommunication service between mobile and land stations, or between mobile stations. A mobile station is intended to be used while in motion or during halts at unspecified points.

Operational fixed station. A fixed station, not open to public correspondence, operated by and for the sole use of persons operating their own radiocommunication facilities in the public safety, industrial, land transportation, marine, or aviation services.

Peak envelope power (of a radio transmitter). The average power supplied to the antenna transmission line by a transmitter during one radio frequency cycle at the crest of the modulation envelope taken under normal operating conditions.

Private aircraft station. A mobile station on board an aircraft not operated as an air carrier. A station on board an air carrier aircraft weighing less than 12,500 pounds maximum certified takeoff gross weight may be licensed as a private aircraft station.

Racon station. A radionavigation land station which employs a racon. A racon (radar beacon) is a transmitter-receiver associated with a fixed navigational mark, which when triggered by a radar, automatically returns a distinctive signal which can appear on the display of the triggering radar, providing range, bearing and identification information.

Radar. A radiodetermination system based upon the comparison of reference signals with radio signals reflected, or re-transmitted, from the position to be determined.

Radio altimeter. Radionavigation equipment, on board an aircraft or spacecraft used to determine the height of the aircraft or spacecraft above the Earth's surface or another surface.

Radiobeacon station. A station in the radionavigation service the emissions of which are intended to enable a mobile station to determine its bearing or direction in relation to the radiobeacon station.

Radiodetermination service. A radiocommunication service which uses radiodetermination. Radiodetermination is the determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation of radio waves. A station in this service is called a radiodetermination station.

Radionavigation land test stations. A radionavigation land station which is used to transmit information essential to the testing and calibration of aircraft navigational aids, receiving equipment, and interrogators at predetermined surface locations. The Maintenance Test Facility (MTF) is used primarily to permit maintenance testing by aircraft radio service personnel. The Operational Test Facility (OTF) is used primarily to permit the pilot to check a radionavigation system aboard the aircraft prior to takeoff.

Radiolocation service. A radiodetermination service for the purpose of radiolocation. Radiolocation is the use of radiodetermination for purposes other than those of radionavigation.

Radionavigation service. A radiodetermination service for the purpose of radionavigation. Radionavigation is the use of radiodetermination for the purpose of navigation, including obstruction warning.

Surveillance radar station. A radionavigation land station in the aeronautical radionavigation service employing radar to display the presence of aircraft within its range.

Survival craft station. A mobile station in the maritime or aeronautical mobile service intended solely for survival purposes and located on any lifeboat, life raft or other survival equipment.

VHF Omni directional range station (VOR). RO> A radionavigation land station in the aeronautical radionavigation service providing direct indication of the bearing (omni-bearing) of that station from an aircraft.

SUBPART B - APPLICATIONS AND LICENSES

§ 87. 17 Scope.

This subpart contains the procedures and requirements for the filing of applications for radio station licenses in the aviation services. Part 1 of the Commission's rules contains the general rules of practice and procedure applicable to proceedings before the Commission.

§ 87. 19 Basic eligibility.

(a) *General.* Foreign governments or their representatives cannot hold station licenses.

(b) *Aeronautical enroute and aeronautical fixed stations.* The following persons cannot hold an aeronautical enroute or an aeronautical fixed station license.

(1) Any alien or the representative of any alien;

(2) Any corporation organized under the laws of any foreign government;

(3) Any corporation of which any officer or director is an alien;

(4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or its representative, or by a corporation organized under the laws of a foreign country; or

(5) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or its representatives, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

§ 87. 21 Standard forms to be used.

(a) Applications must be submitted on prescribed forms which may be obtained from the Commission in Washington, D.C. 20554 or from any of its field offices.

(b) The following table indicates the correct standard form or other means to be used when submitting an application:

Class of Station	Application for:	Use:
Aircraft	New license	FCC Form 404
	Fleet license (new)	FCC Form 404
	Modification of license	FCC Form 404
	Renewal of license with modification	FCC Form 404
	Renewal of license without modification	FCC Form 405-B
	Temporary operating authority in conjunction with application for a new license or modification of license	FCC Form 404-
	Transfer of control of corporation	FCC Form 703
	Special Temporary authority	Letter/Telegram
	Name or address change	Letter
Ground	New license	FCC Form 406
	Modification of license	FCC Form 406
	Renewal of license with modification	FCC Form 406
	Renewal of license without modification	FCC Form 405-A
	Assignment of license	FCC Form 1046 and 406
	Transfer of control of corporation	FCC Form 703
	Special Temporary Authority	Letter/Telegram
Civil Air Patrol	New license	FCC Form 480
	Modification of license	FCC Form 480
	Renewal of license	FCC Form 480

§ 87. 23 Supplemental information required.

(a) To minimize harmful interference at the National Radio Astronomy Observatory site at Green Bank, Pocahontas County, WV, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, WV, an applicant for a new station license (other than mobile, temporary base, temporary fixed or Civil Air Patrol), or for modification of an existing license to change the frequency, power, antenna location, height or directivity within the area bounded by 39' 15'N. on the north 78' 30'W. on the east 37' 30'N on the south and 80' 30'W on

the west, must first notify the Director, National Radio Astronomy Observatory, Attn: Interference Office, Post Office Box No. 2, Green Bank, WV 24944, in writing, of the geographical coordinates of the antenna, antenna height, antenna directivity, frequency, emission and power. The application to the Commission must show the date notification was made to the Observatory. The Commission will allow twenty (20) days after receipt of its copy of the notification for comments or objections. If a timely response is received, the Commission will consider the comments or objections.

(b) Geographical coordinates of Commission facilities which require protection are listed in Section 0.121(c). Applications for stations (except mobile stations) which will be located within 80 km (50 miles) of the referenced coordinates are examined to determine extent of possible interference. A clause protecting the monitoring station may be added to the station license.

(c) Each application for a station license to operate in the vicinity of Boulder County, CO, under this part must give due consideration, prior to filing applications to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the Research Laboratories of the Department of Commerce Boulder County, CO. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that field strength at 40°07' 50"N latitude, 105°14' 40"W longitude resulting from new assignments (other than mobile stations) or from the modification or relocation of the existing facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density[1] (dBW/m^2) in authorized bandwidth of service
Below 540 kHz	10	-65.8
540 to 1600 kHz	20	-59.8
1.6 to 470 MHz	10	[2]-65.8
470 to 890 MHz	30	[2]-56.2
Above 890 MHz	1	[2]-85.8

[1] Equivalent values of power flux density are calculated assuming a free-space characteristic impedence of 376.7 120 ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the Commission's rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(d) Each applicant is responsible for determining whether proposals for a new or modified station require environmental information. Applicants should refer to § 1.1307 to identify those actions for which environmental information must be submitted.

§ 87. 25 Filing of applications.

Rules about the filing of applications for radio station licenses are contained in this section.

(a) Each application must specify an address in the United States to be used by the Commission in serving documents or directing correspondence to the licensee. Otherwise the address contained in the licensee's most recent notification will be used for this purpose. Failure to answer Commission correspondence can result in revocation of the license.

(b) An original of each application must be filed with the Commission, Gettysburg, PA 17326, unless otherwise noted on the application form. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

(c) One application may be submitted for the total number of aircraft stations in the fleet (fleet license).

(d) One application for aeronautical land station license may be submitted for the total number of stations in the fleet.

(e) One application for modification or transfer of control may be submitted for two or more stations when the individual stations are clearly identified and the following elements are the same for all existing or requested station licenses involved:

(1) Applicant;

(2) Specific details of request;

(3) Rule part.

(f) One application must be submitted for each Civil Air Patrol wing. The application must show the total number of transmitters to be authorized. The wing need not notify the Commission each time the number of transmitters is altered. Upon renewal, the wing must notify the Commission of any change in the total number of transmitters.

EDITORIAL NOTE: A fee schedule was implemented by the Federal Communications Commission on April 1, 1986. A synopsis of the new fee schedule applicable to the Aviation Services is printed here as a convenience to the reader. Governmental entities are exempt from the fee schedule.

Aircraft stations (new, modification or renewal); no fee; submit to address indicated on FCC Form 404 or FCC Form 405B, as appropriate.

Aviation ground stations (new or modification);60 fee; submit FCC Form 406 to FCC, Aviation Ground Service, P.O. Box 371632M Pittsburgh, PA 15251-7632.

Aviation ground stations (renewal);60 fee; submit FCC Form 405A to FCC, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251-6703.

§ 87. 27 License term.

(a) Licenses for regular stations will normally be issued for five years.

(b) Licenses for developmental stations will be issued for a period not to exceed one year and are subject to change or to cancellation by the Commission at any time, upon reasonable notice but without a hearing.

§ 87. 29 Partial grant of application.

Whenever the Commission, without a hearing, grants an application in part or with any privileges, terms, or conditions other than those requested, the action will be considered as a grant of the application unless the applicant within 30 days from the date on which such grant is made, or from its effective date if a later day is specified, files with the Commission a written protest, rejecting the grant as made. Upon receipt of such protest, the Commission will vacate its original action upon the application and, if necessary, set the application for hearing.

§ 87. 31 Changes during license term.

The following table indicates the required action for changes made during the license term:

TYPE OF CHANGE	REQUIRED ACTION
Mailing address	Written notice to FCC Gettysburg, PA 17326
Name of licensee (without change in ownership, control or corporate structure)	Written notice to FCC Gettysburg, PA 17326
Transfer of control of a corporation	Use FCC Form 703
Assignment of a radio station license (except aircraft station license)	Use FCC Forms 1046 and 406
Addition of transmittingequipment on a frequency, frequency band or with emission types not authorized on present license	Use FCC Form 404 (aircraft) Use FCC Form 406 (land) Use FCC Form 480 (C.A.P.)
Addition or replacement of transmitting equipment on a frequency or frequency band with emission types authorized on present license	None
Addition of survival craft station	None

§ 87. 33 Transfer of aircraft station license prohibited.

An aircraft station license cannot be assigned. If the aircraft ownership is transferred, the previous license must be returned to the Commission. The new owner must file for a new license.

§ 87. 35 Cancellation of license.

When a station permanently discontinues operation, the license must be returned to the Commission, Gettysburg, PA 17326.

§ 87. 37 Developmental license.

This section contains rules about the licensing of developmental operations subject to this part.

(a) *Showing required.* Each application for a developmental license must be accompanied by a letter showing that:

(1) The applicant has an organized plan of development leading to a specific objective;

(2) A point has been reached in the program where actual transmission by radio is essential;

(3) The program has reasonable promise of substantial contribution to of the use of radio;

(4) The program will be conducted by qualified personnel;

(5) The applicant is legally qualified and possesses technical facilities for conduct of the program as proposed;

(6) The public interest, convenience and necessity will be served by the proposed operation.

(b) *Signature and statement of understanding.* The showing must be signed by the applicant.

(c) *Assignable frequencies.* Developmental stations may be authorized to use frequencies available for the service and class of station proposed. The number of frequencies assigned will depend upon the specific requirements of the developmental program and the number of frequencies available.

(d) *Developmental program* :

(1) The developmental program as described by the applicant must be substantially followed.

(2) Where some phases of the developmental program are not covered by the general rules of the Commission and the rules in this part, the Commission may specify supplemental or additional requirements or conditions as considered necessary in the public interest convenience or necessity.

(3) The Commission may, from time to time, require a station engaged in developmental work to conduct special tests which are reasonable and desirable to the authorized developmental program.

(e) *Use of developmental stations* :

(1) Developmental stations must conform to all applicable technical and operating requirements contained in this part, unless a waiver is specifically provided in the station license.

(2) Communication with any station of a country other than the United States is prohibited unless specifically provided in the station license.

(3) The operation of a developmental station must not cause harmful interference to stations regularly authorized to use the frequency.

(f) *Report of operation required.* A report on the results of the developmental program must be filed within 60 days of the expiration of the license. report must accompany a request for renewal of the license. Matters which the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information. However, public disclosure is governed by Section 0.467 of the Commission's rules. The report must include the following:

(1) Results of operation to date.

(2) Analysis of the results obtained.

(3) Copies of any published reports.

(4) Need for continuation of the program.

(5) Number of hours of operation on each authorized frequency during the term of the license to the date of the report.

§ 87. 39 Equipment acceptable for licensing.

Transmitters listed in this part must be type accepted for a particular use by the Commission based upon technical requirements contained in Subpart D of this part.

§ 87. 41 Frequencies.

(a) *Applicant responsibilities.* The applicant must propose frequencies to be used by the station consistent with the applicant's eligibility, the proposed operation and the frequencies available for assignment. Applicants must cooperate in the selection and use of frequencies in order to minimize interference and obtain the most effective use of stations. *See* Subpart E and the appropriate subpart applicable to the class of station being considered.

(b) *Licensing limitations.* Frequencies are available for assignment to stations on a shared basis only and will not be assigned for the exclusive use of any licensee. The use of any assigned frequency may be restricted to one or more geographical areas.

(c) *Government frequencies.* Frequencies allocated exclusively to federal government radio stations may be licensed. The applicant for a government frequency must provide a satisfactory showing that such assignment is required for inter-communication with government stations or required for coordination with activities of the federal government. The Commission will coordinate with the appropriate government agency before a government frequency is assigned.

(d) *Assigned frequency.* The frequency coinciding with the center of an authorized bandwidth of emission must be specified as the assigned frequency. For single sideband emission, the carrier frequency must also be specified.

§ 87. 43 Operation during emergency.

A station may be used for emergency communications in a manner other than that specified in the station license or in the operating rules when normal communication facilities are disrupted. The Commission may order the discontinuance of any such emergency service.

§ 87. 45 Time in which station is placed in operation.

This section applies to unicom stations and radionavigation land stations, excluding radionavigation land test stations. In those cases in which a new or modified license is issued, if the station or modifications authorized have not been placed in operation within eight months from the date of the grant, the license becomes invalid and must be returned to the Commission unless the licensee shows good cause why notification was not made. The licensee must notify the Commission in writing when the station is placed in operation.

§ 87.47 Application for a portable aircraft station license.

A person may apply for a portable aircraft radio station license if the need exists to operate the same station on more than one U.S. aircraft.

APPENDIX B

OLD Rule §	Sub-part	NEW Rule §	Title	Sub-part Action
87.1	A	87.1	Basis and purpose	A revised
--	-	87.3	Other applicable rule parts	A new
87.3	A	87.19	Eligibility for station license	B revised
87.263			Supplemental eligibility	I revised
87.5	A	87.5	Definitions.	A revised
87.20	A	87.25	Filing of application (a)	B revised
87.22	A	87.21	Standard forms to be used	B revised
87.23	A	87.25	Filing of application (c)	B revised
87.25	A	-	---	- deleted
87.27	A	-	---	- deleted
87.29	A	87.21	Standard forms to be used	B revised (table)
(a)(6) 87.33			Transfer of aircraft station license prohibited	B revised
87.31 a-c	A	87.21	Standard forms to be used	B revised (table)
d-g 87.23			Supplemental information required	B revised
87.33	A	87.21	Standard forms to be used	B revised (table)
87.35	A	87.31	Changes during license term	B revised (table)
87.37	A	87.23	Supplemental information required	B revised
87.39	A	-	---	- deleted
87.41	A	-	---	- deleted
87.43	A	-	---	- deleted
87.45	A	-	---	- deleted
87.47	A	87.29	Partial grant of application	B revised
87.48	A	-	---	- deleted
87.49	A	87.49	Comparative evaluation of mutually exclusive applications	B unchanged
87.51	A	87.27	License term	B revised
87.58	A	87.45	Time in which station must be placed in operation	B revised
87.61	A	87.41	Frequencies	B revised
87.63	A	87.131	Power and emissions	D revised (table)
87.65	A	87.133	Frequency stability	D revised
87.67	A	87.137	Types of emission	D revised
87.69	A	87.135	Bandwidth of emission	D revised
87.71	A	87.139	Emission limitations	D revised
87.73	A	87.141	Modulation requirements	D revised
87.75	A	87.143	Transmitter control requirements	D revised
87.77	A	87.145	Acceptability of transmitter for licensing	D revised
87.79	A	87.147	Type acceptance of equipment	D revised
87.93	A	87.195	ELT test procedures	F revised
87.95	A	87.103	Posting station license	C revised
87.97	A	87.105	Availability of operator permit or license	C revised
87.99	A	87.109	Station logs	C revised
87.111	A	87.71	Frequency measurements	C revised
87.113	A	87.75	Maintenance of tower marking and control equipment	C revised
87.115	A	87.107	Station identification	C revised
87.117	A	87.77	Availability for inspections	C revised
87.119	A	87.79	Answer to notice of violation	C revised
87.121	A	-	---	deleted
87.123	A	87.169	Scope	E revised
87.127	A	-	---	deleted

87.129	A	87.111	Suspension or discontinuance of operation	C revised
87.133	A	87.89	Minimum operator requirements	C revised
87.135	A	87.73	Transmitter adjustments and tests	C revised
87.136	A	87.93	Operation of transmitter controls	C revised
87.137	A	-	---	deleted
87.139	A	87.89	Minimum operator requirements	C revised, combined
87.141	A	87.37	Developmental license (a)	B revised

OLD Rule §	Sub-part	NEW Rule §	Title	Sub-part Action
87.143(a)	A	87.37	Developmental license	B revised
(b)	-	---		- deleted
87.145	A	87.37	Developmental license (f)(1) and (3)	B revised
87.147	A	87.37	Developmental license (d)	B revised
87.149	A	87.37	Developmental license (e)	B revised
87.151	A	87.37	Developmental license (c)	B revised
87.153	A	87.37	Developmental license (h)	B revised
-	-	87.169	Scope	E new
-	-	87.171	Class of station symbols	E new
-	-	87.173	Frequencies	E new
87.181	B	87.185	Scope of service	F revised
87.183	B	87.187	Frequencies	F revised
87.195			Frequencies	F revised
87.185	B	87.191	Foreign aircraft stations	F revised
87.195	B	---		deleted
87.195(d)	B	87.421	Frequencies	O unchanged
87.201	B	---		deleted
87.235	B	87.187	Frequencies	F revised consolidated
87.237	B	87.185	Scope of Service	F revised
87.239	B	87.185	Scope of service	F revised, consolidated
87.241	B	87.189	Requirements for aeronautical public service aircraft equipment	F revised
87.243	B	87.191	Priority of communications	F revised
87.251	C	87.217	Special conditions	G revised
87.253	C	87.215	Frequencies	G revised
87.255	C	87.131	Power	D revised consolidated
87.257	C	87.213	Scope of service	G revised
87.271	D	87.241	Frequencies	H revised
87.273	D	87.131	Power	D revised consolidated
87.275	D	87.239	Eligibility	H revised

OLD Rule §	Sub-part	NEW Rule §	Title	Sub-part Action
87.277	D	87.237	Scope of service	H revised
87.291	E	87.261	Scope	I revised
87.293	E	87.265	Frequencies	I revised consolidated
87.295	E	87.265	Frequencies	I revised consolidated
87.297	E	87.265	Frequencies	I revised consolidated
87.299	E	87.265	Frequencies	I revised consolidated
87.301	E	87.263	Frequencies	I revised consolidated
87.305	E	87.265	Administrative communications	I unchanged
87.331	G	87.303	Frequencies	J revised
87.333	G	87.301	Supplemental eligibility	J revised
87.334	G	87.305	Frequency coordination	J revised
87.335	G	87.307	Cooperative use of facilities	J revised
87.337	G	87.299	Scope of service	J revised
87.338	G	87.303	Frequencies	J revised
87.341	H	87.323	Frequencies	K revised
87.343	H	87.321	Supplemental eligibility	K revised
87.345	H	87.319	Scope of service	K revised
87.353	H	87.131	Power	D revised condensed
87.355	H	87.325	Nonexclusivity of frequency assignment	K revised
87.401	I	87.421	Frequencies	O revised condensed
87.403	I	87.417	Scope of service	O revised
87.405	I	87.423	Hours of operation	O revised
87.407	I	87.419	Supplemental eligibility	O revised
87.409	I	87.425	Interference	O revised
87.411	I	87.131	Power	D revised condensed
87.431	J	87.349	Frequencies	L revised
87.432	J	87.347	Supplemental eligibility	L revised
87.433a-b	J	87.345	Scope of service	L revised
c	87.323		Frequencies	K revised

OLD Rule §	Sub-part	NEW Rule §	Title	Sub-part Action
87.435	J	87.131	Power	D revised condensed
87.437	J	87.345	Scope of service	L revised
87.439	J	87.351	Frequency changes	L revised
87.441	K	87.373	Frequencies	M revised
87.443	K	87.371	Scope of service	M revised
87.451	L	87.277	Eligibility	I revised
87.453	L	87.275	Scope of service	I revised
87.455	L	87.279	Assignment of frequencies	I revised
87.461	M	87.445	Scope of service	P revised
87.463	M	87.449	Frequencies	P revised
87.467	M	87.451	Licensing limitations	P revised
87.501	N	87.475	Frequencies	Q revised consolidated
87.503	N	87.473	Supplemental eligibility	Q revised, consolidated
	87.477		Condition of grant for radionavigation land stations	Q new
87.505	N	87.481	Unattended operation of domestic	Q revised

			radiobeacon stations	
87.506	N	87.479	Harmful interference to radio-navigation stations	Q revised consolidated
87.511	O	87.503	Supplemental eligibility	R revised
87.513	O	87.505	Frequencies	R revised
87.515	O	87.501	Scope of service	R revised
87.521	P	87.475	Frequencies	Q revised consolidated
87.523	P	87.471	Scope of service	Q revised
	87.193		Scope of service	F revised
87.525	P	87.473	Supplemental eligibility	Q revised, consolidated
87.601	Q	87.393	Scope of service	N revised
87.602	Q	-	-	- deleted
87.603	Q	-	-	- deleted
87.441	K	87.373	Frequencies	M revised
87.443	K	87.371	Scope of service	M revised

OLD Rule §	Sub-part	NEW Rule §	Title	Sub-part Action
87.451	L	87.277	Eligibility	I revised
87.453	L	87.275	Scope of service	I revised
87.455	L	87.279	Assignment of frequencies	I revised
87.461	M	87.445	Scope of service	P revised
87.463	M	87.449	Frequencies	P revised
87.467	M	87.451	Licensing limitations	P revised
87.501	N	87.475	Frequencies	Q revised consolidated
87.503	N	87.473	Supplemental eligibility	Q revised, consolidated
	87.477		Condition of grant for radio-navigation land stations	Q new
87.505	N	87.481	Unattended operation of domestic radiobeacon stations	Q revised
87.506	N	87.479	Harmful interference to radio-navigation stations	Q revised consolidated
87.511	O	87.503	Supplemental eligibility	R revised
87.513	O	87.505	Frequencies	R revised
87.515	O	87.501	Scope of service	R revised
87.521	P	87.475	Frequencies	Q revised consolidated
87.523	P	87.471	Scope of service	Q revised
	87.193		Scope of service	F revised
87.525	P	87.473	Supplemental eligibility	Q revised, consolidated
87.601	Q	87.393	Scope of service	N revised
87.602	Q	-	-	- deleted
87.603	Q	-	-	- deleted
87.604	Q	-	-	- deleted
87.605	Q	-	-	- deleted
87.606	Q	87.395	Plan for the Security Control of Air Traffic and Air Navigation Aids (Short title:SCATANA)	N revised
87.607	Q	87.397	Emergency operations	N revised
Appendix	AECS Plan	-	-	- deleted
87.621	R	87.525	Scope of service	S unchanged
87.623	R	87.527	Supplemental eligibility	S unchanged
87.625	R	87.529	Application for frequency assignment	S revised

SUBPART C - OPERATING REQUIREMENTS AND PROCEDURES

OPERATING REQUIREMENTS

§ 87. 69 Maintenance tests.

The licensee may make routine maintenance tests on equipment other than emergency locator transmitters if there is no interference with the communications of any other station. Procedures for conducting tests on emergency locator transmitters are contained in Subpart F.

§ 87. 71 Frequency measurements.

A licensed operator must measure the operating frequencies of all land-based transmitters at the following times:

(a) When the transmitter is originally installed;

(b) When any change or adjustment is made in the transmitter which may affect an operating frequency; or

(c) When an operating frequency has shifted beyond tolerance.

§ 87. 73 Transmitter adjustments and tests.

A general radiotelephone operator must directly supervise and be responsible for all transmitter adjustments or tests during installation, servicing or maintenance of a radio station. A general radiotelephone operator must be responsible for the proper functioning of the station equipment.

§ 87. 75 Maintenance of tower marking and control equipment.

Section 303(q) of the Communications Act of 1934, as amended, requires some antenna structures to be painted or illuminated. The licensee of any radio station which has such an antenna structure must operate and maintain the tower marking and associated control equipment in accordance with Part 17 of this chapter.

§ 87. 77 Availability for inspections.

The licensee must make the station and its records available for inspection upon request.

§ 87. 79 Answer to notice of violation.

(a) Any person who receives an official notice of violation of the Communications Act any legislative act, executive order, treaty to which the U.S. is a party, terms of a station or operator license, or the Commission's rules must send a written answer, in duplicate, to the office which originated the notice, within 10 days of receipt. If the licensee cannot acknowledge within the allotted period

due to unavoidable circumstances an answer must be given at the earliest practicable date with a satisfactory explanation of the delay.

(b) The answer to each notice must be complete in itself. The answer must contain a full explanation of the incident involved and must give the action taken to prevent a recurrrence of the violation. If the notice relates to operator errors, the answer must give the name and license number of the operator on duty.

RADIO OPERATOR REQUIREMENTS

§ 87. 87 Classification of operator licenses and endorsements.

(a) Commercial radio operator licenses issued by the Commission are classified in accordance with the Radio Regulations of the International Telecommunication Union.

(b) The following licenses are issued by the Commission. International classification if different from the license name, is given in parentheses. The licenses and their alphanumeric designator are listed in descending order.

(1) T-1 First Class Radiotelegraph Operator's Certificate

(2) T-2 Second Class Radiotelegraph Operator's Certificate

(3) G General Radiotelephone Operator License (radiotelephone operator's general certificate)

(4) T-3 Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate)

(5) MP Marine Radio Operator Permit (radiotelephone operator's restricted certificate)

(6) RP Restricted Radiotelephone Operator Permit (radiotelephone operator's restricted certificate)

§ 87. 89 Minimum operator requirements.

(a) A station operator must hold a commercial radio operator license or permit, except as listed in paragraph (d).

(b) The minimum operator license or permit required for operation of each specific classification is:

Minimum Operator License or Permit

land stations, all classes :

- all frequencies except VHF telephony transmitters providing domestic service — RP

aircraft stations, all classes :

- frequencies below 30 MHz allocated exclusively to aeronautical mobile services — RP
- frequencies below 30 MHz not allocated exclusively to aeronautical mobile services — MP or higher
- frequencies above 30 MHz not allocated exclusively to aeronautical mobile services and assigned for international use — MP or higher
- frequencies above 30 MHz not assigned for international use — none
- frequencies not used solely for telephony or exceeding 250 watts carrier power or 1000 watts peak envelope power — G or higher

(c) The operator of a telephony station must directly supervise and be responsible for any other person who transmits from the station, and must ensure that such communications are in accordance with the station license.

(d) No operator license is required to:

(1) operate an aircraft radar set, radio altimeter, transponder or other aircraft automatic radionavigation transmitter by flight personnel;

(2) test an emergency locator transmitter or a survival craft station used solely for survival purposes;

(3) operate an aeronautical enroute station which automatically transmits digital communications to aircraft stations;

(4) operate a VHF telephony transmitter providing domestic service or used on domestic flights.

§ 87. 91 Operation of transmitter controls.

The holder of a marine radio operator permit or a restricted radiotelephone operator permit must perform only transmitter operations which are controlled by external switches. These operators must not perform any internal adjustment of transmitter frequency determining elements. Further, the stability of the transmitter frequencies at a station operated by these operators must be maintained by the transmitter itself. When using an aircraft radio station on maritime mobile service frequencies the carrier power of the transmitter must not exceed 250 watts (emission A3E) or 1000 watts (emission R3E, H3E, or J3E).

OPERATING PROCEDURES

§ 87. 103 Posting station license.

(a) *Stations at fixed locations*. The license or a photocopy must be posted or retained in the station's permanent records.

(b) *Aircraft radio stations*. The license must be either posted in the aircraft or kept with the aircraft registration certificate.

(c) *Aeronautical mobile stations*. The license must be retained as a permanent part of the station records.

§ 87. 105 Availability of operator permit or license.

All operator permits or licenses must be readily available for inspection.

§ 87. 107 Station identification.

(a) *Aircraft station*. Identify by one of the following means:

(1) Aircraft radio station call sign.

(2) Assigned FCC control number (assigned to ultralight aircraft).

(3) The type of aircraft followed by the characters of the registration marking ("N" number) of the aircraft, omitting the prefix letter "N". When communication is initiated by a ground station, an aircraft station may use the type of aircraft followed by the last three characters of the registration marking.

(4) The FAA assigned radiotelephony designator of the aircraft operating organization followed by the flight identification number.

(5) An aircraft identification approved by the FAA for use by aircraft stations participating in an organized flying activity of short duration.

(b) *Land and fixed stations.* Identify by means of radio station call sign, its location, its assigned FAA identifier, the name of the city area or airport which it serves, or any additional identification required. An aeronautical enroute station which is part of a multistation network may also be identified by the location of its control point.

(c) *Survival craft station.* Identify by transmitting a reference to its parent aircraft. No identification is required when distress signals are transmitted automatically. Transmissions other than distress or emergency signals, such as equipment testing or adjustment, must be identified by the call sign or by the registration marking of the parent aircraft followed by a single digit other than 0 or 1.

(d) *Exempted station.* The following types of stations are exempted from the use of a call sign: airborne weather radar, radio altimeter, air traffic control transponder distance measuring equipment, collision avoidance equipment, racon, radio relay radionavigation land test station (MTF), and automatically controlled aeronautical enroute stations.

§ 87.109 Station logs.

A station at a fixed location in the international aeronautical mobile service must maintain a written or automatic log in accordance with Paragraph 3.5, Volume II, Annex 10 of the ICAO Convention.

§ 87.111 Suspension or discontinuance of operation.

The licensee must notify the nearest FAA regional office upon the temporary suspension or permanent discontinuance of any station. This requirement does not apply to aircraft stations. The FAA center must be notified again when service resumes.

SUBPART D - TECHNICAL REQUIREMENTS

§ 87.131 Power and emissions.

(a) The authorized emissions and maximum power are as follows:

Class of station	Frequency band/Authorized frequency	Emission(s)	Maximum power[1]
Aeronautical advisory	VHF	A3E	10 watts
Aeronautical multicom	VHF	A3E	10 watts
Aeronautical enroute	HF	R3E, H3E, J3E, J7B, H2B	6 kw
and aeronautical fixed		A1A, F1B, J2A, J2B	1.5 kw
	VHF	A3E	200 watts [2]
Aeronautical search	VHF	A3E	10 watts
and rescue	HF	R3E, H3E, J3E	100 watts
Operational fixed	VHF	G3E, F2D	30 watts
Flight test land	VHF	A3E	200 watts
	UHF	F2D, F9D, F7D	25 watts [3]
	HF	H2B, J3E, J7D, J9W	6.0 kw
Aviation support	VHF	A3E	50 watts
Airport control tower	VHF	A3E	50 watts
	below 400 kHz	A3E	15 watts
Aeronautical utility mobile	VHF	A3E	10 watts
Radionavigation land	108.150 MHz	A9W	1 milliwatt
test	334.550 MHz	A1N	1 milliwatt
	other VHF	M1A, XXA, A1A, A1N, A2A, A2D, A9W	1 watt
	other UHF	M1A, XXA, A1A, A1N, A2A, A2D, A9W	1 watt
	5031.0 MHz	F7D	1 watt
Radionavigation land	various[4]	various[4]	various[4]

Aeronautical frequencies

Aircraft Communication	UHF	F2D, F9D, F7D	25 watts
	VHF	A3E	55 watts
	HF	R3E, H3E, J3E, J7B, H2B, J7D, J9W	400 watts
	HF	A1A, F1B, J2A, J2B	100 watts
Radionavigation	various[5]	various[5]	various[5]

Marine Frequencies[6]

156.300 MHz	G3E	5 watts
156.375 MHz	G3E	5 watts
156.400 MHz	G3E	5 watts
156.425 MHz	G3E	5 watts
156.450 MHz	G3E	5 watts
156.625 MHz	G3E	5 watts
156.800 MHz	G3E	5 watts
156.900 MHz	G3E	5 watts
157.425 MHz	G3E	5 watts
HF[7]	R3E, H3E, J3E, J2B, F1B,	1000 watts
	A3E	250 watts
MF[7]	R3E, H3E, J3E, J2B, F1B	1000 watts
	A3E	250 watts

Notes :

[1] The power is measured at the transmitter output terminals and the type of power is determined according to the emission designator as follows:

(i) Mean power (pY) for amplitude modulated emissions and transmitting both sidebands using unmodulated full carrier.

(ii) Peak envelope power (pX) for all emission designators other than those referred to in paragraph (i) of this note.

[2] Power and antenna height are restricted to the minimum necessary to achieve the required service.

[3] Transmitter power may be increased to overcome line and duplexer losses but must not exceed 25 watts delivered to the antenna.

[4] Frequency, emission and maximum power will be determined after coordination with appropriate Government agencies.

[5] Frequency, emission and maximum power will be determined by appropriate standards during the type acceptance process.

[6] To be used with airborne marine equipment type accepted for Part 80 (ship) and used in accordance with Part 87.

[7] Applicable only to marine frequencies used for public correspondence.

(b) Power must be determined by direct measurement.

§ 87.133 Frequency stability.

(a) Except as provided in paragraphs (c), (d), and (f) of this section, the carrier frequency of each station must be maintained within these tolerances:

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations	Tolerance[1]	Tolerance[2]
(1) Band-9 to 535 kHz:		
Aeronautical stations	100	100
Aircraft stations	200	100
Survival craft stations on 500 kHz	5,000	20 Hz[3]
Radionavigation stations	100	100
(2) Band-1605 to 4000 kHz:		
Aeronautical fixed stations:		
Power 200 W or less	100	100[8]
Power above 200 W	50	50[8]
Aeronautical stations:		
Power 200 W or less	100[7]	100[7,8]
Power above 200 W	50[7]	50[7,8]
Aircraft stations	100[7]	100[7]
Survival craft stations on 2182 kHz	200	20 Hz[3]
(3) Band-4 to 29.7 MHz:		
Aeronautical fixed stations:		
Power 500 W or less	50	
Power above 500 W	15	
Single-sideband and Independent-sideband emission:		
Power 500 W or less		50 Hz
Power above 500 W		20 Hz
Class F1B emissions		10 Hz
Other classes of emission:		
Power 500 W or less		20
Power above 500 W		10
Aeronautical stations:		
Power 500 W or less	100[7]	100[7]
Power above 500 W	50[7]	50[7]
Aircraft stations	100[7]	100[7]
Survival craft stations on 8364 kHz	200	50 Hz[3]
(4) Band-29.7 to 100 MHz:		
Aeronautical fixed stations:		
Power 200 W or less	50	
Power above 200 W	30	
Power 50 W or less		30
Power above 50 W		20
Operational fixed stations:		
73-74.6 MHz (Power 50 W or less)	50	30
73-74.6 MHz (Power above 50 W)	20	20
72-73.0 MHz and 75.4-76.0 MHz	5	5
Radionavigation stations	100	50
(5) Band-100 to 137 MHz:		
Aeronautical stations	50[4]	20
Emergency locator transmitter test stations	50	50
Survival craft stations on 121.5 MHz	50	50
Emergency locator stations	50	50
Aircraft and other mobile stations in the Aviation Services	50[5]	30
Radionavigation stations	20	20
(6) Band-137 to 470 MHz:		
Aeronautical stations	50	20
Survival craft stations on 243 MHz	50	50
Aircraft stations	50[5]	30
Radionavigation stations	50	50
(7) Band-470 to 2450 MHz:		
Aeronautical stations	100	20
Aircraft stations	100	20
Radionavigation stations:		
470-960 MHz	500	500
960-1215 MHz	20	20
1215-2450 MHz	500	500
(8) Band-2450 to 10500 MHz:		
Radionavigation stations	1250[6,9]	1250[6,9]
(9) Band-10.5 GHz to 40 GHz:		
Radionavigation stations	5000	5000

NOTES

[1] This tolerance is the maximum permitted until January 1, 1990, for transmitters installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in 10^6 unless shown as Hertz (Hz).

[2] This tolerance is the maximum permitted after January 1, 1985 for new and replacement transmitters and to all transmitters after January 1, 1990. Tolerance is indicated in parts in 10^6 unless shown as Hertz (Hz).

[3] For transmitters first type accepted or type approved after November 30, 1977.

[4] The tolerance for transmitters type accepted between January 1, 1966, and January 1 1974, is 30 parts in 10^6. The tolerance for transmitters type accepted after January 1, 1974, and stations using offset carrier techniques is 20 parts in 10^6.

[5] The tolerance for transmitters type accepted after January 1, 1974, is 30 parts in 10^6.

[6] In the 5000 to 5250 MHz band, the FAA requires a tolerance of +10 kHz for Microwave Landing System stations which are to be a part of the National Airspace System (FAR 171).

[7] For single-sideband transmitters operating in the frequency bands 1605-4000 kHz and 4-29.7 MHz which are allocated exclusively to the Aeronautical Mobile (R) Service, the tolerance is: aeronautical stations, 10 Hz; aircraft stations, 20 Hz.

[8] For single-sideband radiotelephone transmitters the tolerance is: in the bands 1605-4000 kHz and 4-29.7 MHz for peak envelope powers of 200 W or less and 500 W or less, respectively, 50 Hz; in the bands 1605-4000 kHz and 4-29.7 MHz for peak envelope powers above 200 W and 500 W, respectively, 20 Hz.

[9] Where specific frequencies are not assigned to radar stations, the bandwidth occupied by the emissions of such stations must be maintained wholly within the band allocated to the service and the indicated tolerance does not apply.

(b) The power shown in paragraph (a) of this section is the peak envelope power for single-sideband transmitters and the mean power for all other transmitters.

(c) For single-sideband transmitters, the tolerance is:

(1) All aeronautical stations on land other than Civil Air Patrol	10 Hz
(2) All aircraft stations other than Civil Air Patrol	20Hz
(3) Civil Air Patrol Stations	50 Hz

(d) For radar transmitters, except non-pulse signal radio altimeters, the frequency at which maximum emission occurs must be within the authorized frequency band and must not be closer than 1.5/T MHz to the upper and lower limits of the authorized bandwidth where T is the pulse duration in microseconds.

(e) The Commission may authorize tolerances other than those specified in this section upon a satisfactory showing of need.

(f) The carrier frequency tolerance of transmitters operating in the 1435-1535 MHz and 2310-2390 MHz bands manufactured before January 2, 1985, is 0.003 percent. The carrier frequency tolerance of transmitters operating in the 1435-1535 MHz and 2310-2390 MHz bands manufactured after January 1, 1985, is 0.002 percent. After January 1, 1990, the carrier frequency tolerance of all transmitters operating in the 1435-1535 MHz and 2310-2390 MHz bands is 0.002 percent.

§ 87.135 *Bandwidth of emission.*

(a) Occupied bandwidth is the width of a frequency band such that, below the lower and above the upper frequency limits, the mean powers emitted are each equal to 0.5 percent of the total mean power of a given emission.

(b) The authorized bandwidth is the maximum occupied bandwidth authorized to be used by a station.

(c) The necessary bandwidth for a given class of emission is the width of the frequency band which is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions.

§ 87.137 *Types of emission.*

(a) The assignable emissions, corresponding emission designators and authorized bandwidths are as follows:

		Authorized Bandwidth (kilohertz)		
Class of emission	Emission designator	Below 50 MHz	Above 50 MHz	Frequency deviation
A1A[1]	100HA1A	0.25		
A1N	300HA1N		0.75	
A2A	2K04A2A	2.74	50	
A2D	6K0A2D		50	
A3E[2]	6K00A3E		50[3]	
A3E	3K20A3E[4]		25[4]	
A3X[4]	3K20A3N		25	
A9W[5]	13K0A9W		25	
F1B[1]	1K70F1B	1.7		
F1B[1]	2K40F1B	2.5		
F2D	5M0F2D		[9]	
F3E[6]	16K0F3E		20	5
F3E[7]	36K0F3E		40	15
F7D[8]	5M0F7D		[9]	
F9D	5M0F9D		[9]	
G3E[6]	16K0G3E		20	5
H2B[10,11]	2K80H2B	3.0		
H3E[11,12]	2K80H3E	3.0		
J2A[1]	100HJ2A	0.25		
J2B[1]	1K70J2B	1.7		
	2K40J2B	2.5		
J3E[11,12]	2K80J3E	3.0		
J7B[11]	2K80J7B	3.0		
J7D	5M0J7D		[9]	
J9W[11]	2K80J9W	3.0		
M1A	620HM1A			
NON	NON		None [4]	
PON[13]	[9]		[9]	
R3E[11,12]	2K80R3E	3.0		
XXA[14]	1K12XXA	2.74		

NOTES:

[1] A1A, F1B, J2A and J2B are permitted provided they do not cause harmful interference to H2B, J3E, J7B and J9W.

[2] For use with an authorized bandwidth of 8.0 kilohertz at radiobeacon stations. A3E will not be authorized:

(i) at existing radiobeacon stations that are not authorized to use A3 and at new radiobeacon stations unless specifically recommended by the FAA for safety purposes.

(ii) at existing radiobeacon stations currently authorized to use A3, subsequent to January 1, 1990, unless specifically recommended by the FAA for safety purposes.

[3] In the band 117.975-136 MHz, the authorized bandwidth is 25 kHz for transmitters type accepted after January 1, 1974.

[4] Applicable only to Survival Craft Stations and to the emergency locator transmitters and emergency locator transmitter test stations employing modulation in accordance with that specified in § 87.141 of the Rules. The specified bandwidth and modulation requirements shall apply to emergency locator transmitters for which type acceptance is granted after October 21, 1973.

[5] This emission may be authorized only for audio frequency shift keying and phased shift keying for digital data links on any frequency listed in § 87.263(a)(1).

[6] Applicable to operational fixed stations in the bands 72.0-73.0 MHz and 75.4-76.0 MHz and to CAP stations using F3 on 143.900 MHz and 148.150 MHz.

[7] Applicable to operational fixed stations presently authorized in the band 73.0-74.6 MHz.

[8] The authorized bandwidth is equal to the necessary bandwidth for frequency or digitally modulated transmitters used in aeronautical telemetering and associated aeronautical telemetry or telecommand stations operating in the 1435-1535 MHz and 2310-2390 MHz bands. The necessary bandwidth must be computed in accordance with Part 2 of this chapter.

[9] To be specified on license.

[10] H2B must be used by stations employing digital selective calling.

[11] For A1A, F1B and single sideband emissions except H2B, the assigned frequency must be 1400 Hz above the carrier frequency.

[12] R3E, H3E, and J3E will be authorized only below 25000 kHz. Only H2B, J3E, J7B, and J9W are authorized, except that A3E and H3E may be used only on 3023 kHz and 5680 kHz for search and rescue operations.

[13] The letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars.

[14] Authorized for use at radiobeacon stations.

[15] Applicable only to transmitters of survival craft stations, emergency locator transmitter stations and emergency locator transmitter test stations type accepted after October 21, 1973.

(b) For other emissions, an applicant must determine the emission designator by using Part 2 of this chapter.

(c) A license to use radiotelephony includes the use of tone signals or signaling devices whose sole function is to establish or maintain voice communications.

(d) Emissions other than, or bandwidths in excess of, those listed in paragraph (b) of this section, will be authorized only upon a satisfactory showing of need. An

application requesting this special license must fully describe the emission desired and the required bandwidth, and must state the purpose of the proposed operation.

§ *87.139 Emission limitations.*

(a) Except when using single sideband (R3E, H3E, J3E) or frequency modulation (F9) or digital modulation (F9Y) for telemetry or telecommand in the frequency bands 1435-1535 MHz and 2310-2390 MHz, the mean power of any emissions must be attenuated below the mean power of the transmitters (pY) as follows:

(1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth the attenuation must be at least 25 dB;

(2) When the frequency is removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth the attenuation must be at least 35 dB.

(3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth the attenuation for aircraft station transmitters must be at least 40 dB; and the attenuation for aeronautical station transmitters must be at least 43 + 10 log10 pY dB.

(b) For aircraft station transmitters and for aeronautical station transmitters first installed before February 1, 1983, and using H2B, H3E, J3E, J7B or J9W, the mean power of any emissions must be attenuated below the mean power of the transmitter (pY) as follows:

(1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth of 4.0 kHz, the attenuation must be at least 25 dB.

(2) When the frequency is removed from the assigned frequency by more than 150 percent up to and including 250 percent of the authorized bandwidth of 4.0 kHz, the attenuation must be at least 35 dB.

(3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth of 4.0 kHz for aircraft station transmitters the attenuation must be at least 40 dB; and for aeronautical station transmitters the attenuation must be at least 43 + 10 log10 pY dB.

(c) For aircraft station transmitters first installed after February 1, 1983, and for aeronautical station transmitters in use after February 1, 1983 and using H2B, H3E J3E, J7B or J9W, the peak envelope power of any emissions must be attenuated below the peak envelope power of the transmitter (pX) as follows:

(1) When the frequency is removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth of 3.0 kHz, the attenuation must be at least 30 dB.

(2) When the frequency is removed from the assigned frequency by more than 150 percent up to and including 250 percent of the authorized bandwidth of 3.0 kHz, the attenuation must be at least 38 dB.

(3) When the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth of 3.0 kHz for aircraft transmitters the attenuation must be at least 43 dB. For aeronautical station transmitters with transmitter power up to and including 50 watts the attenuation must be at least 43 + 10 log10 pX dB and with transmitter power more than 50 watts the attenuation must be at least 60 dB.

(d) Except for telemetry in the 1435-1535 MHz band, when the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth for aircraft stations above 30 MHz and all ground stations the attenuation must be at least 43 + log10 pY dB.

(e) When using frequency modulation or digital modulation for telemetry or telecommand in the 1435-1535 MHz and 2310-2390 MHz frequency bands with an authorized bandwidth equal to or less than 1 MHz the emissions must be attenuated as follows:

(1) On any frequency removed from the assigned frequency by more than 100 percent of the authorized bandwidth up to and including 100 percent plus 0.5 MHz, the attenuation must be at least 60 dB, when measured in a 3.0 kHz bandwidth. This signal need not be attenuated more than 25 dB below 1 milliwatt.

(2) On any frequency removed from the assigned frequency by more than 100 percent of the authorized bandwidth plus 0.5 MHz, the attenuation must be at least 55 + 10 log10 pY dB when measured in a 3.0 kHz bandwidth.

(f) When using frequency modulation or digital modulation for telemetry or telecommand in the 1435-1535 MHz or 2310-2390 MHz frequency bands with an authorized bandwidth greater than 1 MHz, the emissions must be attenuated as follows:

(1) On any frequency removed from the assigned frequency by more than 50 percent of the authorized bandwidth plus 0.5 MHz up to and including 50 percent of the authorized bandwidth plus 1.0 MHz, the attenuation must be 60 dB, when measured in a 3.0 kHz bandwidth. The signal need not be attenuated more than 25 dB below 1 milliwatt.

(2) On any frequency removed from the assigned frequency by more than 50 percent of the authorized bandwidth plus 1.0 MHz, the attenuation must be at least 55 + 10 log10 pY dB when measured in a 3.0 kHz bandwidth.

(g) The requirements of paragraphs (e) and (f) of this section apply to transmitters type accepted after January 1, 1977, and to all transmitters first installed after January 1, 1983.

§ **87.141** *Modulation requirements.* **[87.73]**

(a) When A3E emission is used, the modulation percentage must not exceed 100 percent. This requirement does not apply to emergency locator transmitters or survival craft transmitters.

(b) A double sideband full carrier amplitude modulated radiotelephone transmitter with rated carrier power output exceeding 10 watts must be capable of automatically preventing modulation in excess of 100 percent.

(c) If any licensed radiotelephone transmitter causes harmful interference to any authorized radio service because of excessive modulation, the Commission will require the use of the transmitter to be discontinued until it is rendered capable of automatically preventing modulation in excess of 100 percent.

(d) Single sideband transmitters must be able to operate in the following modes:

Carrier mode	Level N(dB) of the carrier with respect to peak envelope power

Full carrier (H3E).	0 > N > -6.
Suppressed carrier (J3E).	Aircraft stations N < -26; Aeronautical stations N < - 40.

(e) Each frequency modulated transmitter operating in the band 72.0-76.0 MHz must have a modulation limiter.

(f) Each frequency modulated transmitter equipped with a modulation limiter must have a low pass filter between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 15 kHz the filter must have an attenuation referred to 1 kHz of at least 40 log10 (f/3) db where "f" is the frequency in kilohertz. Above 15 kHz, the attenuation must be at least 28 db greater than the attenuation at 1 kHz.

(g) The types of emissions for ELTs must be in accordance with those specified in the Federal Aviation Administration (FAA) Technical Standard Order (TSO) Document TSO-C91a titled "Emergency Locator Transmitter (ELT) Equipment" dated April 29, 1985. TSO-C91a is incorporated by reference in accordance with 5 U.S.C. 552(a). TSO-C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue, S.W., Washington, D.C. 20591.

(h) Transmission of A3E or NON emission must not exceed 90 seconds and must be followed by a transmission of at least three minutes of A3N emission; each transmission of a synthesized and/or pre-recorded voice message must be preceded by the words "this is a recording."

(i) ELTs manufactured effective October 1, 1988, must have in emissions A3N, A3E and NON a clearly defined carrier frequency distinct from the modulation sidebands. On 121.500 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within +30 Hz of the reference carrier frequency. On 243.000 MHz at least thirty percent of the total power emitted during each sweep cycle of the audio frequencies (A3N emission) must be contained within +60 Hz of the reference carrier frequency. *See* TSO-C91a at paragraph (a)(3)(ii). Additionally, if the type of modulation is changed the carrier frequency must not shift more than +30 Hz from the fixed reference frequency on 121.500 MHz and +60 Hz on 243.000 MHz. The long term stability of the carrier frequency must comply with the requirements in § 87.133.

§ 87.143 Transmitter control requirements.

(a) Each transmitter must be installed so that it is not accessible to, or capable of being operated by persons other than those authorized by the licensee.

(b) Each station must be provided with a control point at the location of the transmitting equipment, unless otherwise specifically authorized. Except for aeronautical enroute stations governed by paragraph (e), a control point is the location at which the radio operator is stationed. It is the position at which the transmitter(s) can immediately be turned off.

(c) Applicants for additional control points at aeronautical advisory (unicom) stations must specify the location of each proposed control point.

(d) Except for aeronautical enroute stations governed by paragraph (f), the control point must have the following facilities installed:

(1) A device that indicates when the transmitter is radiating or when the transmitter control circuits have been switched on. This requirement does not apply to aircraft stations;

(2) Aurally monitoring of all transmissions originating at dispatch points;

(3) A way to disconnect dispatch points from the transmitter; and

(4) A way to turn off the transmitter.

(e) A dispatch point is an operating position subordinate to the control point. Dispatch points may be installed without authorization from the Commission, and dispatch point operators are not required to be licensed.

(f) In the aeronautical enroute service, the control point for an automatically controlled enroute station is the computer facility which controls the transmitter. Any computer controlled transmitter must be equipped to automatically shut down after 3 minutes of continuous transmission of an unmodulated carrier.

§ 87.145 Acceptability of transmitters for licensing.

(a) The Commission publishes a list of type approved and type accepted equipment entitled "Radio Equipment List - Equipment Acceptable for Licensing." Copies of this list are available for inspection at any of the Commission's offices.

(b) Each transmitter must be type accepted for use in these services, except as listed in paragraph (d) of this section. However, aircraft stations which transmit on maritime mobile frequencies must use transmitters type accepted for use in ship stations in accordance with Part 80 of this chapter.

(c) Some radio equipment installed aboard air carrier aircraft must meet requirements of the Commission and of the FAA. The FAA requirements may be obtained from the Federal Aviation Administration, Aircraft Maintenance Division (AFS-300), 800 Independence Avenue, S.W., Washington, D.C. 20591.

(d) The equipment listed below is exempted from type acceptance. The operation of transmitters which have not been type accepted must not result in harmful interference due to the failure of those transmitters to comply with technical standards of this subpart.

(1) Developmental or Civil Air Patrol transmitters.

(2) Flight test station transmitters for limited periods where justified.

(3) U.S. Government transmitters furnished in the performance of a U.S. Government contract if the use of type accepted equipment would increase the cost of the contract or if the transmitter will be incorporated in the finished product. However, such equipment must meet the technical standards contained in this subpart.

§ 87.147 Type acceptance of equipment.

(a) Type acceptance may be requested by following the type acceptance procedure in Part 2 of this chapter. Aircraft transmitters must meet the requirements over an ambient temperature range of -20 degrees to +50 degrees Celsius.

(b) An applicant for a station license may request type acceptance for an individual transmitter by following the type acceptance procedure in Part 2 of this chapter. Such a transmitter will be individually type accepted and so

noted on the station license but will not generally be included in the Commission's "Radio Equipment List - Equipment Acceptable for Licensing".

(c) An applicant for type acceptance of equipment intended for transmission in any of the frequency bands listed in paragraph (3), must notify the FAA of the filing of a type acceptance application. The letter of notification must be mailed to: FAA Spectrum Engineering Division (AES-500), 800 Independence Avenue S.W., Washington, D.C. 20591 no later than the date of filing of the application with the Commission.

(1) The notification must describe the equipment, give the manufacturer's identification, antenna characteristics, rated output power emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.

(2) The type acceptance application must include a copy of the notification letter to the FAA. The Commission will not act for 21 days after receipt of the application to afford the FAA an opportunity to comment. If the FAA objects to the application for equipment authorization, it should mail its objection with a showing that the equipment is incompatible with the National Airspace System to: Office of Engineering and Technology - Laurel Laborabory, Authorization And Evaluation Division, 7435 Oakland Mills Road, Columbia, MD 21046. If the Commission receives such an objection, the Commission will consider the FAA showing before taking final action on the application.

(3) The frequency bands are as follows: 74.8 MHz to 75.2 MHz; 108.000 MHz to 136.000 MHz; 328.600 MHz to 335.400 MHz; 960.000 MHz to 1215.000 MHz; 1559.000 MHz to 1626.500 MHz; 5000.000 MHz to 5250.000 MHz; 14.000 GHz to 14.400 GHz; 15.400 GHz to 15.700 GHz; 24.250 GHz to 25.250 GHz; and 31.800 GHz to 33.400 GHz.

SUBPART E - FREQUENCIES

§ 87.169 Scope.

This subpart contains class of station symbols and a frequency table which lists assignable frequencies. Frequencies in the Aviation Services will transmit communications for the safe, expeditious, and economic operation of aircraft and the protection of life and property in the air. Each class of land station and Civil Air Patrol station may communicate in accordance with the particular sections of this part which govern these classes. Land stations in the Aviation Services in Alaska may transmit messages concerning sickness, death, weather, ice conditions or other matters relating to safety of life and property if there is no other established means of communications between the points in question and no charge is made for the communications service.

§ 87.171 Class of station symbols.

The two or three letter symbols for the classes of station in the aviation services are:

Symbol	Class of Station
AX	Aeronautical fixed
AXO	Aeronautical operational fixed
FA	Aeronautical land (unspecified)
FAU	Aeronautical advisory (unicom)
FAC	Airport control tower
FAE	Aeronautical enroute
FAM	Aeronautical multicom
FAP	Civil Air Patrol
FAR	Aeronautical search and rescue
FAS	Aviation support
FAT	Flight test
FAW	Automatic weather observation
MA	Aircraft (Air carrier and Private)
MA1	Air carrier aircraft only
MA2	Private aircraft only
MOU	Aeronautical utility mobile
MRT	ELT test
RL	Radionavigation land (unspecified)
RLA	Marker beacon
RLB	Radiobeacon
RLG	Glide path
RLL	Localizer
RLO	VHF omni-range
RLS	Surveillance radar
RLT	Radionavigation land test
RLW	Microwave landing system

§ 87.173 Frequencies.

(a) The table in paragraph (b) of this section lists assignable carrier frequencies or frequency bands.

(1) The single letter symbol appearing in the "Subpart" column indicates the subpart of this part which contains additional applicable regulations.

(2) The two or three letter symbol appearing in the "Class of Station" column indicates the class of station to which the frequency is assignable.

(b) Frequency table:

Frequency or Frequency Band	Subpart	Class of Station	Remarks
90-110 kHz	Q	RL	LORAN"C"
190-285 kHz	Q	RLB	Radiobeacons
200-285 kHz	O	FAC	Air traffic control
325-405 kHz	O	FAC	Air traffic control
325-435 kHz	Q	RLB	Radiobeacons
410.0 kHz	F	MA	International direction-finding for use outside of U.S.
457.0 kHz	F	MA	Working frequency for aircraft on over water flights
500.0 kHz	F	MA	International calling and distress frequency for ships and aircraft on over water flights
510-525 kHz	Q	RLB	Radiobeacons
2182.0 kHz	F	MA	International distress and calling
2372.5 kHz	R	MA, FAP	Civil Air Patrol
2374.0 kHz	R	MA, FAP	Civil Air Patrol
2375.5 kHz	R	MA, FAP	Civil Air Patrol
2648.0 kHz	I	AX	Alaska station.
2851.0 kHz	I, J	MA, FAE, FAT	International HF (AFI); Flight test
2854.0 kHz	I	MA, FAE	International HF (SAT)

2866.0 kHz	I	MA, FAE	Domestic HF (Alaska)
2869.0 kHz	I	MA, FAE	International HF (CEP)
2872.0 kHz	I	MA, FAE	International HF (NAT)
2875.0 kHz	I	MA, FAE	Domestic HF
2878.0 kHz	I	MA1, FAE	Domestic HF; International HF (AFI)
2887.0 kHz	I	MA, FAE	International HF (CAR)
2899.0 kHz	I	MA, FAE	International HF (NAT)
2911.0 kHz	I	MA, FAE	Domestic HF
2932.0 kHz	I	MA, FAE	International HF (NP)
2935.0 kHz	I	MA, FAE	International HF (SAT)
2944.0 kHz	I	MA, FAE	International HF (SAM and MID)
2956.0 kHz	I	MA, FAE	Domestic HF
2962.0 kHz	I	MA, FAE	International HF (NAT)
2971.0 kHz	I	MA, FAE	International HF (NAT)
2992.0 kHz	I	MA, FAE	International HF (MID)
2998.0 kHz	I	MA, FAE	International HF (CWP)
3004.0 kHz	I, J	MA, FAE, FAT	International HF (NCA); Flight test
3013.0 kHz	I	MA, FAE	Long distance operational control
3016.0 kHz	I	MA, FAE	International HF (EA, NAT)
3019.0 kHz	I	MA1, FAE	Domestic HF; International HF (NCA)
3023.0 kHz	F, M, O	MA1, FAR, FAC	Search and rescue communications
3281.0 kHz	K	MA, FAS	Lighter-than-air craft and aeronautical stations serving lighter-than-air craft
3413.0 kHz	I	MA, FAE	International HF (CEP)
3419.0 kHz	I	MA, FAE	International HF (AFI)
3425.0 kHz	I	MA, FAE	International HF (AFI)
3434.0 kHz	I	MA1, FAE	Domestic HF
3443.0 kHz	J	MA, FAT	
3449.0 kHz	I	MA, FAE	Domestic HF
3452.0 kHz	I	MA, FAE	International HF (SAT)
3455.0 kHz	I	MA, FAE	International HF (CAR, CWP)
3467.0 kHz	I	MA, FAE	International HF (AFI, MID, SP)
3470.0 kHz	I	MA, FAE	Domestic HF and International HF (SEA)
3473.0 kHz	I	MA, FAE	International HF (MID)
3476.0 kHz	I	MA, FAE	International HF (INO, NAT)
3479.0 kHz	I	MA, FAE	International HF (EUR, SAM)
3485.0 kHz	I	MA, FAE	International HF (EA, SEA)
3491.0 kHz	I	MA, FAE	International HF (EA)
3494.0 kHz	I	MA, FAE	Long distance operational control
4125.0 kHz	F	MA	Distress and safety with ships and coast stations
4466.0 kHz	R	MA, FAP	Civil Air Patrol
4467.5 kHz	R	MA, FAP	Civil Air Patrol
4469.0 kHz	R	MA, FAP	Civil Air Patrol
4506.0 kHz	R	MA, FAP	Civil Air Patrol
4507.5 kHz	R	MA, FAP	Civil Air Patrol
4509.5 kHz	R	MA, FAP	Civil Air Patrol
4550.0 kHz	I	AX	Gulf of Mexico
4583.5 kHz	R	MA, FAP	Civil Air Patrol
4585.0 kHz	R	MA, FAP	Civil Air Patrol
4586.5 kHz	R	MA, FAP	Civil Air Patrol
4601.0 kHz	R	MA, FAP	Civil Air Patrol
4602.5 kHz	R	MA, FAP	Civil Air Patrol
4604.0 kHz	R	MA, FAP	Civil Air Patrol
4628.5 kHz	R	MA, FAP	Civil Air Patrol
4630.0 kHz	R	MA, FAP	Civil Air Patrol
4631.5 kHz	R	MA, FAP	Civil Air Patrol
4645.0 kHz	I	AX	Alaska
4657.0 kHz	I	MA, FAE	International HF (AFI, CEP)
4666.0 kHz	I	MA, FAE	International HF (CWP)
4669.0 kHz	I	MA, FAE	International HF (MID, SAM)
4672.0 kHz	I	MA1, FAE	Domestic HF
4675.0 kHz	I	MA, FAE	International HF (NAT)
4678.0 kHz	I	MA, FAE	International HF (NCA)
4947.5 kHz	I	AX	Alaska
5036.0 kHz	I	AX	Gulf of Mexico
5122.5 kHz	I	AX	Alaska
5167.5 kHz	I	FA	Alaska emergency
5310.0 kHz	I	AX	Alaska
5451.0 kHz	J	MA, FAT	
5463.0 kHz	I	MA1, FAE	Domestic HF
5469.0 kHz	J	MA, FAT	
5427.0 kHz	I	MA, FAE	Domestic HF
5484.0 kHz	I	MA, FAE	Domestic HF
5490.0 kHz	I	MA, FAE	Domestic HF
5493.0 kHz	I	MA, FAE	International HF (AFI)
5496.0 kHz	I	MA, FAE	Domestic HF
5508.0 kHz	I	MA1, FAE	Domestic HF
5520.0 kHz	I	MA, FAE	International HF (CAR)
5526.0 kHz	I	MA, FAE	International HF (SAM)
5529.0 kHz	I	MA, FAE	Long distance operational control
5538.0 kHz	I	MA, FAE	Long Distance operational control

5547.0 kHz	I	MA, FAE	International HF (CEP)
5550.0 kHz	I	MA, FAE	International HF (CAR)
5559.0 kHz	I	MA, FAE	International HF (SP)
5565.0 kHz	I	MA, FAE	International HF (SAT)
5571.0 kHz	J	MA, FAT	
5574.0 kHz	I	MA, FAE	International HF (CEP)
5598.0 kHz	I	MA, FAE	International HF (NAT)
5616.0 kHz	I	MA, FAE	International HF (NAT)
5628.0 kHz	I	MA, FAE	International HF (NP)
5631.0 kHz	I	MA, FAE	Domestic HF
5634.0 kHz	I	MA, FAE	International HF (INO)
5643.0 kHz	I	MA, FAE	International HF (SP)
5646.0 kHz	I	MA, FAE	International HF (NCA)
5649.0 kHz	I	MA, FAE	International HF (NAT, SEA)
5652.0 kHz	I	MA, FAE	International HF (AFI, CWP)
5655.0 kHz	I	MA, FAE	International HF (EA, SEA)
5658.0 kHz	I	MA, FAE	International HF (AFI, MID)
5661.0 kHz	I	MA, FAE	International HF (CWP, EUR)
5664.0 kHz	I	MA, FAE	International HF (NCA)
5667.0 kHz	I	MA, FAE	International HF (MID)
5670.0 kHz	I	MA, FAE	International HF (EA)
5680.0 kHz	F, M, O	MA1, FAC FAR	Search and rescue communications
5887.5 kHz	I	AX	Alaska
6532.0 kHz	I	MA, FAE	International HF (CWP)
6535.0 kHz	I	MA, FAE	International HF (SAT)
6550.0 kHz	J	MA, FAT	
6556.0 kHz	I	MA, FAE	International HF (SEA)
6559.0 kHz	I	MA, FAE	International HF (AFI)
6562.0 kHz	I	MA, FAE	International HF (CWP)
6571.0 kHz	I	MA, FAE	International HF (EA)
6574.0 kHz	I	MA, FAE	International HF (AFI)
6577.0 kHz	I	MA, FAE	International HF (CAR)
6580.0 kHz	I	MA, FAE	Domestic HF
6586.0 kHz	I	MA, FAE	International HF (CAR)
6592.0 kHz	I	MA, FAE	International HF (NCA)
6598.0 kHz	I	MA, FAE	International HF (EUR)
6604.0 kHz	I	MA, FAE	Domestic HF
6622.0 kHz	I	MA, FAE	International HF (NAT)
6625.0 kHz	I	MA, FAE	International HF (MID)
6628.0 kHz	I	MA, FAE	International HF (NAT)
6631.0 kHz	I	MA, FAE	International HF (MID)
6637.0 kHz	I	MA, FAE	Long distance operational control
6640.0 kHz	I	MA, FAE	Long distance operational control
6649.0 kHz	I	MA, FAE	International HF (SAM)
6655.0 kHz	I	MA, FAE	International HF (NP)
6661.0 kHz	I	MA, FAE	International HF (NP)
6673.0 kHz	I	MA, FAE	International HF (AFI, CEP)
8015.0 kHz	I	AX	Alaska
8364.0 kHz	F	MA	Search and rescue communications
8822.0 kHz	J	MA, FAT	
8825.0 kHz	I	MA, FAE	International HF (NAT)
8831.0 kHz	I	MA, FAE	International HF (NAT)
8843.0 kHz	I	MA, FAE	International HF (CEP)
8846.0 kHz	I	MA, FAE	International HF (CAR)
8855.0 kHz	I	MA, FAE	Domestic HF; International HF (SAM)
8861.0 kHz	I	MA, FAE	International HF (SAT)
8864.0 kHz	I	MA, FAE	International HF (NAT)
8867.0 kHz	I	MA, FAE	International HF (SP)
8876.0 kHz	I	MA, FAE	Domestic HF
8879.0 kHz	I	MA, FAE	International HF (INO, NAT)
8891.0 kHz	I	MA, FAE	International HF (NAT)
8894.0 kHz	I	MA, FAE	International HF (AFI)
8897.0 kHz	I	MA, FAE	International HF (EA)
8903.0 kHz	I	MA, FAE	International HF (AFI, CWP)
8906.0 kHz	I	MA, FAE	International HF (NAT)
8918.0 kHz	I	MA, FAE	International HF (CAR, MID)
8933.0 kHz	I	MA, FAE	Long distance operational control
8942.0 kHz	I	MA, FAE	International HF (SEA)
8951.0 kHz	I	MA, FAE	International HF (MID)
10018.0 kHz	I	MA, FAE	International HF (MID)
10024.0 kHz	I	MA, FAE	International HF (SAM)
10033.0 kHz	I	MA, FAE	Long distance operational control
10042.0 kHz	I	MA, FAE	International HF (EA)
10045.0 kHz	J	MA, FAT	
10048.0 kHz	I	MA, FAE	International HF (NP)

10057.0 kHz	I	MA, FAE	International HF (CEP)
120066.0 kHz	I	MA, FAE	Domestic HF; International HF (SEA)
12230075.0 kHz	I	MA, FAE	Long distance operational control
13340081.0 kHz		I	MA, FAE International HF (CWP)
12440084.0 kHz	I	MA, FAE	International HF (EUR, SP)
1230096.0 kHz	I	MA, FAE	International HF (NCA, SAM)
12341279.0 kHz	I	MA,FAE	Internatioal HF (NAT)
12341282.0 kHz	I	MA, FAE	International HF (CEP)
1341288.0 kHz	J	MA, FAT	
141291.0 kHz	I	MA, FAE	International HF (SAT)
11300.0 kHz	I	MA, FAE	International HF (AFI)
11306.0 kHz	J	MA, FAT	
11309.0 kHz	I	MA, FAE	International HF (NAT)
11327.0 kHz	I	MA, FAE	International HF (SP)
11330.0 kHz	I	MA, FAE	International HF (AFI,NP)
11336.0 kHz	I	MA, FAE	International HF (NAT)
11342.0 kHz	I	MA, FAE	Long distance operational control
11348.0 kHz	I	MA, FAE	Long distance operational control
11357.0 kHz	I	MA, FAE	Domestic HF
11360.0 kHz	I	MA, FAE	International HF (SAM)
11363.0 kHz	I	MA, FAE	Domestic HF
11375.0 kHz	I	MA, FAE	International HF (MID)
11384.0 kHz	I	MA, FAE	International HF (CWP)
11387.0 kHz	I	MA, FAE	International HF (CAR)
11396.0 kHz	I	MA, FAE	International HF (CAR, EA, SEA)
13273.0 kHz	I	MA, FAE	International HF (AFI)
13288.0 kHz	I	MA, FAE	International HF (AFI, EUR, MID)
13291.0 kHz	I	MA, FAE	International HF (NAT)
13294.0 kHz	I	MA, FAE	International HF (AFI)
13297.0 kHz	I	MA, FAE	International HF (CAR, EA, SAM)
13300.0 kHz	I	MA, FAE	International HF (CEP, CWP, NP, SP)
13303.0 kHz	I	MA, FAE	International HF (EA, NCA)
13306.0 kHz	I	MA, FAE	International HF (INO, NAT)
13309.0 kHz	I	MA, FAE	International HF (EA, SEA)
13312.0 kHz	I, J	MA, FAE, FAT	International HF (MID); Flight test
13315.0 kHz	I	MA, FAE	International HF (NCA, SAT)
13318.0 kHz	I	MA, FAE	International HF (SEA)
13330.0 kHz	I	MA, FAE	Long distance operational control
13348.0 kHz	I	MA, FAE	Long distance operational control
13357.0 kHz	I	MA, FAE	International HF (SAT)
17904.0 kHz	I	MA, FAE	International HF (CEP, CWP, NP, SP)
17907.0 kHz	I	MA, FAE	International HF (CAR, EA, SAM, SEA)
17925.0 kHz	I	MA, FAE	Long distance operational control
17946.0 kHz	I	MA, FAE	International HF (NAT)
17955.0 kHz	I	MA, FAE	International HF (SAT)
17958.0 kHz	I	MA, FAE	International HF (NCA)
17961.0 kHz	I	MA, FAE	International HF (AFI, EUR, INO, MID)
17964.0 kHz	J	MA, FAT	
21931.0 kHz	J	MA, FAT	
21964.0 kHz	I	MA, FAE	Long distance operational control
26618.5 kHz	R	MA, FAP	Civil Air Patrol
26620.0 kHz	R	MA, FAP	Civil Air Patrol
26621.5 kHz	R	MA, FAP	Civil Air Patrol
72.020 - 75.980 MHz	P	FA, AXO	Operational fixed; 20 kHz spacing
75.000 MHz	Q	RLA	Marker beacon
108.000 MHz	Q	RLT	
108.000-117.950 MHz	Q	RLO	VHF omni-range
108.050 MHz	Q	RLT	
108.100-111.950 MHz	Q	RLL	ILS localizer
108.100 MHz	Q	RLT	
108.150 MHz	Q	RLT	
118.000-121.400 MHz	O	MA, FAC, FAW	25 kHz channel spacing
121.500 MHz	G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP	Emergency and distress
121.600-121.925 MHz	O, L, Q	MA, FAC, MOU, RLT	25 kHz channel spacing

121.950 MHz	K	FAS	
121.975 MHz	F	MA2, FAW	Air traffic control operations
122.000 MHz	F	MA	Air carrier and private aircraft enroute flight advisory service provided by FAA
122.025 MHz	F	MA2, FAW	Air traffic control operations
122.050 MHz	F	MA	Air traffic control operations
122.075 MHz	F	MA2, FAW	Air traffic control operations
122. 100 MHz	F, O	MA, FAC	Air traffic control operations
122.125-122.675	F	MA2	Air traffic control operations; 25 kHz spacing
122.700 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations
122.725 MHz	G, L	MA2, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations
122.750 MHz	F	MA2	Private fixed wing aircraft air-to-air communications
122.775 MHz	K	MA, FAS	
122.800 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations
122.825 MHz	I	MA,FAE	Domestic VHF
122.850 MHz	H, K,	MA, FAM, FAS,	
122.875 MHz	I	MA, FAE	Domestic VHF
122.900 MHz	F, H, L, M	MA, FAR, FAM, MOU	
122.925 MHz	H	MA2, FAM	
122.950 MHz	G, L	MA2, FAU, MOU	Unicom at airports with control tower; Aeronautical utility stations
122.975 MHz	G, L	MA2, FAU, MOU	Unicom at airports with no contol tower; Aeronautical utility stations
123.000 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations
123.025 MHz	F	MA2	Helicopter air-to-air communications; Air traffic control operations
123.050 MHz	G, L	MA2, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations
123.075 MHz	G, L	MA2, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations
123.100 MHz	M,O	MA, FAC, FAR	
123.125 MHz	J	MA, FAT	Itinerant
123.150 MHz	J	MA, FAT	Itinerant
123.175 MHz	J	MA, FAT	Itinerant
123.200 MHz	J	MA, FAT	
123.225 MHz	J	MA, FAT	
123.250 MHz	J	MA, FAT	
123.275 MHz	J	MA, FAT	
123.300 MHz	K	MA, FAS	
123.325 MHz	J	MA, FAT	
123.350 MHz	J	MA, FAT	
123.375 MHz	J	MA, FAT	
123.400 MHz	J	MA, FAT	Itinerant
123.425 MHz	J	MA, FAT	
123.450 MHz	J	MA, FAT	
123.475 MHz	J	MA, FAT	
123.500 MHz	K	MA, FAS	
123.525 MHz	J	MA, FAT	
123.550 MHz	J	MA, FAT	
123.575 MHz	J	MA, FAT	Itinerant
123.6-128.8 MHz	O	MA, FAC, FAW	25 kHz channel spacing
128.825-132.000 MHz	I	MA, FAE	Domestic VHF; 25 kHz channel spacing
132.025-135.975 MHz	O	MA, FAC, FAW	25 kHz channel spacing
143.900 MHz	R	MA, FAP	Civil Air Patrol
148.150 MHz	R	MA, FAP	Civil Air Patrol
156.300 MHz	F	MA	For communications with ship stations under specific conditions
156.375 MHz	F	MA	For communications with ship stations under specific conditions; Not authorized in New Orleans vessel traffic service area
156.400 MHz	F	MA	For communications with ship stations under specific conditions
156.425 MHz	F	MA	For communications with ship stations under specific conditions

156.450 MHz	F	MA	For communications with ship stations under specific conditions
156.625 MHz	F	MA	For communications with ship stations under specific conditions
156.800 MHz	F	MA	Distress, safety and calling frequency; For communications with ship stations under specific conditions
156.900 MHz	F	MA	For communications with ship stations under specific conditions
157.425 MHz	F	MA	For communications with commercial fishing vessels under specific conditions except in Great Lakes and St. Lawrence Seaway areas
243.000 MHz	F	MA	Emergency and distress frequency for use of survival craft and emergency locator transmitters
328.600-335.400 MHz	Q	RLG	ILS glide path
334.550 MHz	Q	RLT	
334.700 MHz	Q	RLT	
960-1215 MHz	F, Q	MA, RL	Electronic aids to air navigation
978.000 MHz	Q	RLT	
979.000 MHz	Q	RLT	
1030.000 MHz	Q	RLT	
1104.000 MHz	Q	RLT	
979.000 MHz	Q	RLT	
1300-1350 MHz	F, Q	MA, RLS	Surveillance radars and transponders
1435-1535 MHz	F, J	MA, FAT	Aeronautical telemetry and telecommand operations
1559-1626.5 MHz	F, Q	MA, RL	Aeronautical radionavigation
2310-2390 MHz	J	MA, FAT	Aeronautical telemetry and telecommand operations
2700-2900 MHz	Q	RLS	Airport surveillance and weather radar
4200-4400 MHz	F	MA	Radio altimeters
5000-5250 MHz	Q	MA, RLW	Microwave landing system
5031.000 MHz	Q	RLT	
5350-5470 MHz	F	MA	Airborne radars and associated airborne beacons
8750-8850 MHz	F	MA	Airborne doppler radar
9000-9200 MHz	Q	RLS	Land-based radar
9300-9500 MHz	F	MA	Airborne radars and associated airborne beacons
13250-13400 MHz	F	MA	Airborne doppler radar
14000-14400 MHz	F, Q	MA, RL	Aeronautical radionavigation
15400-15700 MHz	Q	RL	Aeronautical radionavigation
24250-25250 MHz	F, Q	MA, RL	Aeronautical radionavigation
31800-33400 MHz	F, Q	MA, RL	Aeronautical radionavigation

SUBPART F - AIRCRAFT STATIONS

§ 87. 185 Scope of service.

(a) Aircraft stations must limit their communications to the necessities of safe efficient, and economic operation of aircraft and the protection of life and property in the air, except as otherwise specifically provided in this part. Contact with an aeronautical land station must only be attempted when the aircraft is within the service area of the land station. However, aircraft stations may transmit advisory information on air traffic control, unicom or aeronautical multicom frequencies for the benefit and use of other stations monitoring these frequencies in accordance with FAA recommended traffic advisory practices.

(b) Aircraft public correspondence must make service available to all persons without discrimination and on reasonable demand, and must communicate without discrimination with any maritime public coast station or maritime mobile-satellite earth station.

(c) Public correspondence service may be carried on only by aircraft stations licensed to use maritime mobile or maritime mobile-satellite frequencies, and must follow the rules for public correspondence in Part 80.

§ 87. 187 Frequencies.

(a) Frequencies used for air-ground communications are listed in Subpart E. Aircraft stations may use frequencies assigned to Government or non-Government aeronautical stations or radionavigation land stations if the communications are within the aeronautical or radionavigation land station scope of service.

(b) 410 kHz is the international direction-finding frequency for use outside the continental United States.

(c) 457 kHz is an authorized working frequency for flights over the high seas.

(d) 500 kHz is an international calling and distress frequency for aircraft on flights over the high seas. Except for distress, urgency or safety messages an aircraft station

must not transmit on 500 kHz during the silence periods for three minutes twice each hour beginning at x h.15 and x h.45 Coordinated Universal Time (UTC).

(e) The frequency 2182 khz is an international distress and calling frequency for use by ship, aircraft and survival craft stations. Aircraft stations must use J3E emission when operating on 2182 kHz and communicating with domestic public and private coast stations. The emission H3E may be used when communicating with foreign coast and ship stations.

(f) The frequencies 3023 kHz, 5680 kHz, 122.900 MHz and 123.100 MHz are authorized for use by aircraft engaged in search and rescue activities in accordance with Subpart M. These frequencies may be used for air-air and air-ground communications.

(g) The frequency 4125 kHz may be used for distress and safety communications between aircraft and ship and coast maritime mobile stations.

(h) The frequency 8364.0 kHz is authorized for use of survival craft for search and rescue communications with stations in the maritime mobile service.

(i) The frequencies in the band 121.975-122.675 MHz are authorized for use by private aircraft of air traffic control operations.

(1) The frequencies 122.000 and 122.050 MHz are authorized for use by air carrier and private aircraft stations for enroute flight advisory service (EFAS) provided by the FAA;

(2) The frequency 122.100 MHz is authorized for use by air carrier aircraft stations for air traffic control operations at locations in Alaska where other frequencies are not available for air traffic control.

(j) The frequency 122.750 MHz is authorized for use by private fixed wing aircraft for air-air communications. The frequency 123.025 MHz is authorized for use by helicopters for air-air communications.

(k) The frequencies 121.500 MHz and 243.000 MHz are emergency and distress frequencies available for use by survival craft stations, emergency locator transmitters and equipment used for survival purposes. Use of 121.500 MHz and 243.000 MHz shall be limited to transmission of signals and communications for survival purposes. Types A2A A3E, or A3N emissions may be employed, except in the case of emergency locator transmitters where only A3N is permitted.

(l) The frequencies 156.300, 156.375, 156.400, 156.425, 156.450, 156.625, 156.800 156.900 and 157.425 MHz may be used by aircraft stations to communicate with ship stations in accordance with Part 80 and the following conditions:

(1) The altitude of aircraft stations must not exceed 1000 feet, except for reconnaissance aircraft participating in icebreaking operations where an altitude of 1500 feet is allowed;

(2) Aircraft station transmitter power must not exceed five watts;

(3) The frequency 156.300 MHz may be used for safety purposes only. The frequency 156.800 MHz may be used for distress, safety and calling purposes only.

(4) Except in the Great Lakes and along the St. Lawrence Seaway the frequency 157.425 MHz is available for communications with commercial fishing vessels.

(5) The frequency 156.375 MHz cannot be used in the New Orleans, LA, VTS protection area. No harmful interference shall be caused to the VTS.

(m) The frequency band 960 - 1215 MHz is for the use of airborne electronic aids to air navigation and directly associated land stations.

(n) The frequency band 1300 -1350 MHz is for surveillance radar stations and associated airborne transponders.

(o) The frequency band 1435 - 1535 MHz is available for telemetering and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. These frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz.

(p) The frequency band 1559 - 1626.5 MHz is available for airborne electronic aids to air navigation and any associated land station.

(q) The frequency band 4200 - 4400 MHz is reserved exclusively for radio altimeters.

(r) The frequency band 5350 - 5470 MHz in the aeronautical radionavigation service is limited to airborne radars and associated airborne beacons.

(s) The frequency band 8750-8850 MHz is available for use by airborne doppler radars in the aeronautical radionavigation service only on the condition that they must accept any interference which may be experienced from stations in the radiolocation service in the band 8500-10,000 MHz.

(t) The frequency band 9300-9500 MHz is limited to airborne radars and associated airborne beacons.

(u) The frequency band 13250 - 13400 MHz is available for airborne doppler radar use.

(v) The frequency bands 14000 - 14400, 24250 - 25250, 31800 - 33400 MHz are available for airborne radionavigation devices.

(w) Brief keyed RF signals (keying the transmitter by momentarily depressing the microphone "push-to-talk" button) may be transmitted from aircraft for the control of airport lights on the following frequencies:

(1) Any air traffic control frequency listed in § 87.421.

(2) FAA Flight Service Station frequencies 121.975-122.675 MHz and 122.700, 122.725 122.750, 122.775, 122.825, 122.875, 122.975, 123.025, 123.075.

(3) The unicom frequencies 122.700, 122.725, 122.750, 122.800, 122.950 122.975, 123.000, 123.050 and 123.075 MHz.

(4) Aviation support station frequencies listed in § 87.232(b): 121.950, 123.300 and 123.500 MHz if the frequency is assigned to a station at the airport and no harmful interference is caused to voice communications. If no such station is located at the concerned airport, aircraft may use one of the aviation support station frequencies for the control of airport lights.

(5) The frequency 122.9 MHz when it is used as the common traffic advisory frequency at the concerned airport.

(x) Frequencies for public correspondence radiotelephony between ship and public coast stations in the maritime mobile service (except frequencies in the 156 MHz to 174 MHz band) and maritime mobile-satellite service are available for public correspondence between

aircraft and public coast stations. The transmission of public correspondence from aircraft must not cause interference to maritime mobile communications.

(y) Frequencies in the 454.675 - 459.975 MHz band are available in the Public Mobile Radio Service (Part 22) for use on board aircraft for communications with land mobile stations which are interconnected to the nationwide public telephone system.

§ 87. 189 Requirements for public correspondence equipment and operations.

(a) Transmitters used for public correspondence by aircraft stations must be type accepted by the Commission in conformity with Part 80 of this chapter.

(b) A continuous watch must be maintained on the frequencies used for flight safety and regularity while public correspondence communications are being handled.

(c) All communications of stations in the aeronautical mobile service have priority over public correspondence.

(d) Transmission of public correspondence must be suspended when such operation will delay or interfere with messages pertaining to safety of life and property or regularity of flight, or when ordered by the captain of the aircraft.

§ 87. 191 Foreign aircraft stations.

(a) Aircraft of member States of the International Civil Aviation Organization may carry and operate radio transmitters in the United States airspace only if a license has been issued by the State in which the aircraft is registered and the flight crew is provided with a radio operator license of the proper class, issued or recognized by the State in which the aircraft is registered. The use of radio transmitters in the United States airspace must comply with these rules and regulations.

(b) Notwithstanding paragraph (a) where an agreement with a foreign government has been entered into with respect to aircraft registered in the United States but operated by an aircraft operator who is subject to regulation by that foreign government, the aircraft radio station license and aircraft radio operator license may be issued by such foreign government.

EMERGENCY LOCATOR TRANSMITTERS

§ 87. 193 Scope of Service.

Transmissions by emergency locator transmitters (ELTs) are intended to be actuated manually or automatically and operated automatically as part of an aircraft or a survival craft station as a locating aid for survival purposes.

§ 87. 195 Frequencies.

(a) ELTs transmit on the frequency 121.500 MHz, using A3E, A3N or NON emission.

(b) The frequency 243.000 MHz is an emergency and distress frequency available for use by survival craft stations, ELTs and equipment used for survival purposes which are also equipped to transmit on the frequency 121.500 MHz. Use of 243.000 MHz must be limited to transmission of signals and communications for survival purposes. In the case of ELTs use of A3E, A3N or NON emission is permitted.

§ 87. 197 ELT **test procedure.**

ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load.

SUBPART G - AERONAUTICAL ADVISORY STATIONS (UNICOMS)

§ 87. 213 Scope of service.

(a) An aeronautical advisory station (unicom) must provide service to any aircraft station upon request and without discrimination. A unicom must provide impartial information concerning available ground services.

(b)(1) Unicom transmissions must be limited to the necessities of safe and expeditious operation of aircraft such as condition of runways, types of fuel available, wind conditions, weather information, dispatching, or other necessary information. At any airport at which a control tower or FAA flight service station is located, unicoms must not transmit information pertaining to the conditions of runways, wind conditions, or weather information during the hours of operation of the control tower or FAA flight service station.

(2) On a secondary basis, unicoms may transmit communications which pertain to the efficient portal-to-portal transit of an aircraft, such as requests for ground transportation, food or lodging.

(3) Communications between unicoms and air carrier aircraft must be limited to the necessities of safety of life and property.

(4) Unicoms may communicate with aeronautical utility stations and ground vehicles concerning runway conditions and safety hazards on the airport when neither a control tower nor FAA flight service station is in operation.

(c) Unicoms must not be used for air traffic control (ATC) purposes other than to relay ATC information between the pilot and air traffic controller. Relaying of ATC information is limited to the following:

(1) Revisions of proposed departure time;

(2) Takeoff, arrival or flight plan cancellation time;

(3) ATC clearances, provided a letter of agreement is obtained from the FAA by the licensee of the unicom.

§ 87. 215 Supplemental Eligibility.

(a) A unicom and any associated dispatch or control points must be located on the airport to be served.

(b) Only one unicom will be authorized to operate at an airport which does not have a control tower or FAA flight service station. At an airport which has a part-time or full-time control tower or FAA flight service station, the one unicom limitation does not apply and the airport operator and all aviation services organizations may be licensed to operate a unicom on the assigned frequency.

(c) At an airport where only one unicom may be licensed, when the Commission believes that the unicom has been abandoned or has ceased operation, another unicom may be licensed on an interim basis pending final determination of the status of the original unicom. An applicant for an interim license must notify the present licensee and must comply with the notice requirements of paragraph (d) of this section.

(d) An applicant for a unicom license, renewal or modification of frequency assignment at an airport which does not have a control tower or FAA flight service station must notify in writing the owner of the airport and all aviation service organizations located at the airport. The notice must include the applicant's name and address, the name of the airport and a statement that the applicant intends to file an application with the Commission for a unicom. The notice must be given within the ten days preceding the filing of the application with the Commission. Each applicant must submit a statement that either notice has been given and include the date of notfication or notice is not required because the applicant owns the airport and there are no organizations that should be notified.

§ 87. 217 Frequencies.

(a) Only one unicom frequency will be assigned at any one airport. The Commission will assign a frequency based on maximum geographic co-channel separation. However applicants may request a particular frequency which will be taken into consideration when the assignment is made. The frequencies assignable to unicoms are:

(1) 122.950 MHz at airports which have a full time control tower or a full time FAA flight service station.

(2) 122.700, 122.725, 122.800, 122.975, 123.000 123.050 or 123.075 MHz at all other airports.

(b) 121.500 MHz: emergency and distress only.

SUBPART H - AERONAUTICAL MULTICOM STATIONS

§ 87. 237 Scope of service.

(a) The communications of an aeronautical multicom station (multicom) must pertain to activities of a temporary, seasonal or emergency nature involving aircraft in flight. Communications are limited to directing or coordinating ground activities from the air or aerial activities from the ground. Air-to-air communications will be authorized if the communications are directly connected with the air-to-ground or ground-to-air activities described above. Multicom communications must not include those air/ground communications provided for elsewhere in this part.

(b) If there is no unicom and an applicant is unable to meet the requirements for a unicom license, the applicant will be eligible for a multicom license.

(1) The multicom license becomes invalid when a unicom is established at the landing area.

(2) Multicoms must not be used for ATC purposes other than the relay of ATC information between the pilot and air traffic controller. Relaying of ATC information is limited to the following:

(i) Revisions of proposed departure time;

(ii) Takeoff, arrival or flight plan cancellation time;

(iii) ATC clearances, provided a letter of agreement is obtained from the FAA by the licensee of the multicom.

(3) Communications by a multicom must be limited to the safe and expeditious operation of private aircraft, pertaining to the conditions of runways, types of fuel available wind conditions, weather information, dispatching or other information. On a secondary basis, multicoms may transmit communications which pertain to efficient portal-to-portal transit of an aircraft such as requests for ground transportation, food or lodging.

§ 87. 239 Supplemental eligibility.

An application for a multicom must include a showing demonstrating why such a station is necessary, based on the scope of service defined above.

§ 87. 241 Frequencies.

(a) 121.500 MHz: emergency and distress only;

(b) 122.850 or 122.900 MHz;

(c) 122.925 MHz: available for assignment to communicate with aircraft when coordinating forestry management and fire suppression, fish and game management and protection, and environmental monitoring and protection.

SUBPART I - AERONAUTICAL ENROUTE AND AERONAUTICAL FIXED STATIONS

AERONAUTICAL ENROUTE STATIONS

§ 87. 261 Scope of service.

(a) Aeronautical enroute stations provide operational control communications to aircraft along domestic or international air routes. Operational control communications include the safe, efficient and economical operation of aircraft, such as fuel, weather position reports, aircraft performance, and essential services and supplies. Public correspondence is prohibited.

(b) Service must be provided to any aircraft station licensee who makes cooperative arrangements for the operation, maintenance and liability of the the stations which are to furnish enroute service. In emergency or distress situations service must be provided without prior arrangements.

(c) Except in Alaska, only one aeronautical enroute station licensee will be authorized at any one location. In Alaska, only one aeronautical enroute station licensee in the domestic service and one aeronautical enroute station licensee in the international service will be authorized at any one location. (Because enroute stations may provide service over a large area containing a number of air routes or only provide communications in the local area of an airport, location here means the area which can be adequately served by the particular station.)

(d) In Alaska, only stations which serve scheduled air carriers will be licensed to operate aeronautical enroute stations. Applicants must show that the station will provide communications only along routes served by scheduled air carriers.

§ 87. 263 Frequencies.

(a) Domestic VHF service.

(1) Frequencies in the 128.825-132.000 MHz band are available to serve domestic routes. Frequency assignments are based on 25 kHz channel spacing. Proposed operations must be compatible with existing operations in the band.

(2) A system or network of interconnected enroute stations may employ offset carrier techniques on the frequencies listed in paragraph (1). The carrier frequencies of the individual transmitters must not be offset by more than +8 kHz.

(3) The frequencies 122.825 and 122.875 MHz are available for assignment to enroute stations which provide local area service to aircraft approaching or departing a particular airport. These frequencies will be assigned without regard to the restrictions contained in § 87.261(c) and (d). Only organizations operating aircraft with a maximum capacity of 56 passengers or 18,000 pounds cargo will be authorized use of these enroute frequencies.

(4) In Alaska, the frequencies 131.500, 131.600, 131.800 and 131.900 MHz may be assigned to aeronautical enroute stations without regard to the restrictions contained in § 87.261(c) and (d).

(b) Domestic HF service.

(1) Regular use of high frequencies for aeronautical enroute or any aeronautical mobile (R) communications in the domestic service within the continental United States (excluding Alaska) will not be authorized.

(2) These frequencies (carrier) are available for assignment to serve aircraft operating in support of offshore drilling operations in open sea areas beyond the range of VHF propagation:

kHz	kHz
2878.0	4672.0
3019.0	5463.0
3434.0	5508.0

(3) Alaska: The following frequencies (carrier) are available for assignment to serve domestic air routes in the Alaska area:

(i) *Throughout Alaska* : Shared with the FAA and assigned where an applicant shows the need for a service not provided by the FAA.

kHz	kHz
2866.0	5631.0

(ii) *Alaska Aleutian chain and feeders.*

kHz	kHz
2911.0	8855.0
2956.0	10066.0
5496.0	11363.0
6580.0	

(iii) *Central and Southeast Alaska and feeders.*

kHz	kHz
2875.0	6580.0
2911.0	6604.0
3470.0	8876.0
5484.0	11357.0

(iv) The following frequencies (carrier) are available to enroute stations in Alaska without regard to the restrictions contained in § 87.261 (c) or (d). These frequencies may also be used for communications between enroute stations concerning matters directly affecting aircraft with which they are engaged. Enroute stations located at an uncontrolled airport shall not transmit information concerning runway, wind or weather conditions during the operating hours of a unicom.

kHz	kHz
3449.0	5472.0
5167.5[1]	5490.0

[1] The frequency 5167.5 kHz is available to any station for emergency communicationsin Alaska. No airborne operations are permitted. Peak envelope power of stations operating on this frequency must not exceed 150 watts. This frequency may also be used by Alaska private fixed stations for calling purposes, but only for establishing communications.

(c) International VHF service.

Frequencies in the 128.825-132.000 MHz band are available to enroute stations serving international flight operations. Frequency assignments are based on 25 kHz channel spacing. Proposed operations must be compatible with existing operations in the band.

(d) International HF service.

High frequencies (carrier) available to enroute stations serving international flight operations on the Major World Air Route Areas (MWARA's), as defined in the international Radio Regulations and the ICAO Assignment Plan, are:

(1) Central East Pacific (CEP):

kHz	kHz
2869.0	8843.0
3413.0	10057.0
4657.0	11282.0
5547.0	13300.0
5574.0	17904.0
6673.0	

(2) Central West Pacific (CWP):

kHz	kHz
2998.0	6562.0
3455.0	8903.0
4666.0	10081.0
5652.0	11384.0
5661.0	13300.0
6532.0	17904.0

(3) North Pacific (NP):

kHz	kHz
2932.0 kHz	10048.0
5628.0	11330.0
6655.0	13300.0
6661.0	17904.0

(4) South Pacific (SP):

kHz	kHz
3467.0	10084.0
5559.0	11327.0
5643.0	13300.0
8867.0	17904.0

(5) North Atlantic (NAT):

kHz	kHz
2872.0	8825.0
2899.0	8831.0
2962.0	8864.0
2971.0	8879.0
3016.0	8891.0
3476.0	8906.0
4675.0	11279.0
5598.0	11309.0
5616.0	11336.0
5649.0	13291.0
6622.0	13306.0
6628.0	17946.0

(6) Europe (EUR):

kHz	kHz
3479.0	10084.0
5661.0	13288.0
6598.0	17961.0

(7) South America (SAM):

kHz	kHz
2944.0	10024.0
3479.0	10096.0
4669.0	11360.0
5526.0	13297.0
6649.0	17907.0
8855.0	

(8) South Atlantic (SAT):

kHz	kHz
2854.0	8861.0
2935.0	11291.0
3452.0	13315.0
5565.0	13357.0
6535.0	17955.0

(9) Southeast Asia (SEA):

kHz	
3470.0	10066.0
3485.0	11396.0
5649.0	13309.0
5655.0	13318.0
6556.0	17907.0
8942.0	

(10) East Asia (EA):

kHz	kHz
3016.0	10042.0
3485.0	11396.0
3491.0	13297.0
5655.0	13303.0
5670.0	13309.0
6571.0	17907.0
8897.0	

(11) Middle East (MID):

kHz	kHz
2944.0	6631.0
2992.0	8918.0
3467.0	8951.0
3473.0	10018.0
4669.0	11375.0
5658.0	13288.0
5667.0	13312.0
6625.0	17961.0

(12) Africa (AFI):

kHz	kHz
2851.0	6673.0
2878.0	8894.0
3419.0	8903.0
3425.0	8894.0
3467.0	11300.0
4657.0	11330.0
5493.0	13273.0
5652.0	13288.0
5658.0	13294.0
6559.0	17961.0
6574.0	

(13) Indian Ocean (INO):

kHz	kHz
3476.0	13306.0
5634.0	17961.0
8879.0	

(14) North Central Asia (NCA):

kHz	kHz
3004.0	6592.0
3019.0	10096.0
4678.0	13303.0
5646.0	13315.0
5664.0	17958.0

(15) Caribbean (CAR):

kHz	kHz
2887.0	8846.0
3455.0	8918.0
5520.0	11387.0
5550.0	11396.0
6577.0	13297.0
6586.0	17907.0

(e) Long distance operational control.

Long distance operational control frequencies provide communications between aeronautical enroute stations and aircraft stations anywhere in the world for control of the regularity and efficiency of flight and safety of aircraft. World-wide frequencies are not assigned by administrations for MWARA and Regional and Domestic Air Route Area (RDARA).

kHz	kHz
3013.0	10075.0
3494.0	11342.0
5529.0	11348.0
5538.0	13330.0
6637.0	13348.0
6640.0	21964.0
8933.0	
10033.0	

(f) 121.500 MHz: emergency and distress only.

§ 87. 265 Administrative communications.

Domestic VHF aeronautical enroute stations authorized to use A9W emission on any frequency listed in § 87.263(a)(1) may transmit digital administrative communications on a secondary basis, in addition to the operational control communications routinely permitted under § 87.261(a) above. Such secondary administrative communications must directly relate to the business of a participating aircraft operator in providing travel and transportation services to the flying public or to the travel, transportation or scheduling activities of the aircraft operator itself. Stations transmitting administrative communications must provide absolute priority for operational control and other safety communications by means of an automatic priority control system.

AERONAUTICAL FIXED STATIONS

§ 87. 275 Scope of service.

Aeronautical fixed stations provide non-public point-to-point communications service pertaining to safety, regularity and economy of flight. These stations must transmit without discrimination, messages from aircraft which have entered into cooperative arrangements governing the op-

eration and maintenance of such stations. Aeronautical fixed station licensees are required to transmit, without charge or discrimination, all emergency communications.

§ 87. 277 Supplemental eligibility.

Aeronautical fixed station licenses will only be issued to the licensees of associated aeronautical enroute stations. Aeronautical fixed station licenses will not be issued where adequate land line facilities are available.

§ 87. 279 Frequencies.

(a) *United States (except Alaska).* The applicant must request specific frequencies in accordance with § 2.106 of this chapter. The Commission will determine the suitability of the applicant's selection based on the probability of interference to and from existing services assigned on the same or adjacent frequencies. All new assignments of frequencies will be subject to such conditions as may be required to minimize the possibility of harmful interference to existing services.

(b) *Alaska.*

(1) Only stations which serve scheduled air carriers will be licensed. Applicants must show that the station will provide communications only along routes served by the scheduled operations of such carriers.

(2) The following frequencies are available in Alaska. These frequencies will only be licensed in conjunction with licenses for use of the aeronautical enroute frequencies specified in § 87.263(c).

kHz	kHz
2648.0	5310.0
4645.0	5887.5
4947.5	8015.0
5122.5	

(c) *Gulf of Mexico.* In addition to the provisions of paragraph (a) of this section the frequencies 4550.0 and 5036.0 kHz are available in the Gulf of Mexico.

SUBPART J - FLIGHT TEST STATIONS

§ 87. 299 Scope of service.

The use of flight test stations is restricted to the transmission of necessary information or instructions relating directly to tests of aircraft or components thereof.

§ 87. 301 Supplemental eligibility.

(a) The following entities are eligible for flight test station licenses:

(1) Manufacturers of aircraft or major aircraft components;

(2) A parent corporation or its subsidiary if either corporation is a manufacturer of aircraft or major aircraft components; or

(3) Educational institutions and persons primarily engaged in the design, development modification, and flight test evaluation of aircraft or major aircraft components.

(b) Each application must be accompanied by a statement containing facts sufficient to establish the applicant's eligibility under the criteria in paragraph (a) of this section.

§ 87. 303 Frequencies.

(a) These frequencies are available for assignment to flight test land and aircraft stations:

kHz	MHz	MHz	MHz
3281.0[1]	123.175[2]	123.225[3]	123.400[2]
	123.200[3]	123.375[3]	123.450[3]

(b) These additional frequencies are available for assignment only to flight test stations of aircraft manufacturers:

MHz	MHz	MHz	MHz
123.125[2]	123.275[3]	123.425[3]	123.550[3]
123.150[2]	123.325[3]	123.475[3]	123.575[2]
123.250[3]	123.350[3]	123.525[3]	

[1] When R3E, H3E or J3E emission is used, the assigned frequency will be 3282.4 kHz (3281.0 kHz carrier frequency).

[2] This frequency is available only to itinerant stations that have a requirement to be periodically transferred to various locations.

[3] Mobile station operations on these frequencies are limited to an area within 200 miles of an associated flight test land station.

(c) These frequencies are available for equipment test, emergency and backup use with aircraft beyond the range of VHF propagation. Either H2B, J3E, J7B or J9W emission may be used.

Frequencies (carrier) available kHz:	
2851.0	8822.0
3004.0	10045.0
3443.0	11288.0
5451.0	11306.0
5469.0	13312.0
5571.0	17964.0
6550.0	21931.0

(d)(1) Frequencies in the bands 1435-1535 and 2310-2390 MHz are assigned primarily for telemetry and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. These frequencies are shared with flight telemetering mobile stations: 1444.500, 1453.500, 1501.500, 1515.500, 1524.500 and 1525.500 MHz. In the 2310.000-2390.000 MHz band, all other mobile telemetry and telecommand uses are secondary. The Maritime Mobile-Satellite Service will be the only primary service in the 1530.000-1535.000 Mhz band after January 1, 1990.

(2) The authorized bandwidths for stations operating in the bands 1435.000-1535.000 and 2310.000-2390.000 MHz are normally 1, 3 or 5 MHz. Applications for greater bandwidths will be considered in accordance with the provisions of § 87.135. Each assignment will be centered on a frequency between 1435.500 and 1534.500 and 2310.500 and 2389.500 MHz, with 1 MHz channel spacing.

(e) 121.500 MHz: emergency and distress only.

§ 87. 305 Frequency coordination.

(a)(1) Each application for a new station license, renewal or modification of an existing license concerning flight test frequencies, except as provided in paragraph (b) of this section, must be accompanied by a statement from a frequency advisory committee. The committee must comment on the frequencies requested or the proposed

changes in the authorized station and the probable interference to existing stations. The committee must consider all stations operating on the frequencies requested or assigned within 200 miles of the proposed area of operation and all prior coordinations and assignments on the proposed frequency(ies). The committee must also recommend frequencies resulting in the minimum interference. The committee must coordinate in writing all requests for frequencies or proposed operating changes in the 1435-1535 MHz and 2310-2390 MHz bands with the responsible Government Area Frequency Coordinators listed in the NTIA "Manual of Regulations and Procedures for Radio Frequency Management. In addition, committee recommendations may include comments on other technical factors and may contain recommended restrictions which it believes should appear on the license.

(2) The frequency advisory committee must be organized to represent all persons who are eligible for non-Government radio flight test stations. A statement of organization service area and composition of the committee must be submitted to the Commission for approval. The functions of any advisory committee are purely advisory to the applicant and the Commission, and its recommendations are not binding upon either the applicant or the Commission.

(b) These applications need not be accompanied by evidence of frequency coordination:

(1) Any application for modification not involving change in frequency(ies), power emission, antenna height, antenna location or area of operation.

(2) Any application for 121.5 MHz.

§ 87. 307 Cooperative use of facilities.

(a) The Commission will license only one flight test land station per airport, except as provided in paragraph (d).

(b) Flight test land stations located at an airport are required to provide service without discrimination, on a cooperative maintenance basis, to anyone eligible for a flight test station license.

(c) When the licensee of a flight test land station intends to conduct flight tests at an area served by another flight test land station, which may result in interference the licensees must coordinate their schedules in advance. If no agreement is reached the Commission will determine the time division upon request by either licensee.

(d) An application for an additional flight test land station at an airport where such a station is already authorized must be accompanied by a factual showing which must include the following:

(1) Reasons why shared use of the currently licensed flight test land station is not possible; and

(2) Results of coordination with the current licensee of the flight test station at the airport demonstrating that an additional station can be accommodated without significant degradation of the reliability of existing facilities.

SUBPART K -- AVIATION SUPPORT STATIONS

§ 87. 319 Scope of service.

Aviation support stations are used for the following types of operations:

(a) pilot training;

(b) coordination of soaring activities between gliders, tow aircraft and land stations;

(c) coordination of activities between free balloons or lighter-than-air aircraft and ground stations;

(d) coordination between aircraft and aviation service organizations located on an airport concerning the safe and efficient portal-to-portal transit of the aircraft, such as the types of fuel and ground services available; and

(e) promotion of safety of life and property.

§ 87. 321 Supplemental eligibility.

Each application must be accompanied by a statement that the applicant is either the operator of a flying school or lighter-than-air aircraft, engaged in soaring or free ballooning activities, or the operator of an airport or an aviation service organization located on an airport.

§ 87. 323 Frequencies.

(a) 121.500 MHz: emergency and distress only.

(b) The frequencies 121.950, 123.300 and 123.500 MHz are available for assignment to aviation support stations used for pilot training, coordination of lighter-than-air aircraft operations, or coordination of soaring or free ballooning activities. Applicants for 121.950 MHz must coordinate their proposal with the appropriate FAA Regional Spectrum Management Office. A coordination statement must accompany the application. Applicants for aviation support land stations may request frequency(ies) based upon their eligibility although the Commission reserves the right to specify the frequency of assignment. Aviation support mobile stations will be assigned 123.300 and 123.500 MHz. However, aviation support mobile stations must operate only on a noninterference basis to communications between aircraft and aviation support land stations.

(c) The frequency 122.775 MHz and, secondary to aeronautical multicom stations, the frequency 122.850 MHz are available for assignment to aviation support stations. These frequencies may be used for communications between aviation service organizations and aircraft in the airport area. These frequencies must not be used for air traffic control purposes or to transmit information pertaining to runway, wind or weather conditions.

(d) The frequency 3281.0 kHz is available for assignment to aviation support stations used for coordination of lighter-than-air aircraft operations.

SUBPART L -- AERONAUTICAL UTILITY MOBILE STATIONS

§ 87. 345 Scope of service.

Aeronautical utility mobile stations provide communications for vehicles operating on an airport movement area. An airport movement area is defined as the runways, taxiways and other areas utilized for taxiing, takeoff and landing of aircraft, exclusive of loading ramp and parking areas.

(a) An aeronautical utility mobile station must monitor its assigned frequency during periods of operation.

(b) At an airport which has a control tower or FAA flight service station in operation communications by an aeronautical utility mobile station are limited to the management of ground vehicular traffic.

(c) Aeronautical utility mobile stations which operate on the airport's unicom frequency or the frequency 122.900 MHz are authorized only to transmit information relating to safety, such as runway conditions and hazards on the airport. These stations are authorized primarily for monitoring communications from and to aircraft approaching or departing the airport.

(d) Transmissions by an aeronautical utility mobile station are subject to the control of the control tower, the FAA flight service station or the unicom, as appropriate. When requested by the control tower, the flight service station or the unicom, an aeronautical utility station must discontinue transmitting immediately.

(e) An aeronautical utility mobile station operating on the frequency assigned to a control tower or FAA flight service station must not transmit on that frequency when either is in operation. An aeronautical utility station assigned a unicom frequency may continue to transmit safety related information while located on the airport movement area when the unicom is not in operation.

(f) Communications between aeronautical utility mobile stations are not authorized.

§ 87. 347 Supplemental eligibility.

(a) Aeronautical utility stations may transmit on unicom frequencies only at airports which have a unicom and either a part-time or no control tower or FAA flight service station.

(b) An applicant for an aeronautical utility station operating on a unicom frequency or the frequency 122.900 MHz must:

(1) Demonstrate a need to routinely operate a ground vehicle on the airport movement area;

(2) Identify the vehicle(s) in which the station is to be located; and

(3) Either attach a statement showing that the applicant is the airport owner or operator, or a state or local governmental aeronautical agency; or attach a statement from the airport owner or operator granting permission to operate the vehicle on the airport movement area.

§ 87. 349 Frequencies.

(a) The frequency assigned to an aeronautical utility station at an airport served by a control tower or FAA flight service station is the frequency used by the control tower for ground traffic control or by the flight service station for communications with vehicles. The frequency assigned is normally from the band 121.600-121.925 MHz.

(b) The frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis at airports which have a part-time control tower or part-time FAA flight service station and a unicom.

(c) At airports which have a unicom but no control tower or FAA flight service station the frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis. The frequencies available for assignment to unicoms are described in Subpart G.

(d) At airports which have no control tower, flight service or unicom, the frequency 122.900 MHz is available for assignment to aeronautical utility stations.

§ 87. 351 Frequency Changes.

When the aeronautical utility frequency is required to be changed because of an action by the FAA or the Commission (such as a change in the ground control or unicom frequency) the licensee must submit an application for modification to specify the new frequency within 10 days from the date the station begins operation on the new frequency. The licensee has temporary authority to use the new frequency from the date of the change pending receipt of the modified license.

SUBPART M -- AERONAUTICAL SEARCH AND RESCUE STATIONS

§ 87. 371 Scope of service.

Aeronautical search and rescue land and mobile stations must be used only for com- munications with aircraft and other aeronautical search and rescue stations engaged in search and rescue activities. Aeronautical land search and rescue stations can be moved for temporary periods from a specified location to an area where actual or practice search and rescue operations are being conducted.

§ 87. 373 Supplemental eligibility.

Licenses for aeronautical search and rescue stations will be granted only to governmental entities or private organizations chartered to perform aeronautical search and rescue functions.

§ 87. 375 Frequencies.

(a) The frequency 123.100 MHz is available for assignment to aeronautical search and rescue stations for actual search and rescue missions. Each search and rescue station must be equipped to operate on this frequency.

(b) The frequency 122.900 MHz is available for assignment to aeronautical search and rescue stations for organized search and rescue training and for practice search and rescue missions.

(c) The frequencies 3023.0 kHz and 5680.0 kHz are available for assignment to aircraft and ship stations for search and rescue scene-of-action coordination, including communications with participating land stations. Ship stations communicating with aircraft stations must employ 2K80J3E emission.

(d) 121.500 MHz: emergency and distress only.

SUBPART N - EMERGENCY COMMUNICATIONS

§ 87. 393 Scope of service.

This subpart provides the rules governing operation of stations in the Aviation Services during any national or local emergency situation constituting a threat to national security or safety of life and property. This subpart is consistent with the Aeronautical Emergency Communications System Plan for all Aviation Services licensees of the Commission which was developed pursuant to Sections 1, 4(o), 301 and 303 of the Communications Act, and Executive Order 11490, as amended. This Plan provides for emergency communications to meet the requirements of the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA), Civil Reserve Air Fleet (CRAF), War Air Service Program (WASP) and, where applicable, State and Regional Disaster Airlift Planning (SARDA).

§ 87. 395 Plan for the Security Control of Air Traffic and Air Navigation Aids (Short Title : SCATANA).

(a) The Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA) is promulgated in furtherance of the Federal Aviation Act of 1958, as amended, the Communications Act and Executive Order 11490, as amended. SCATANA defines the responsibilities of the Commission for the security control of non-Federal air navigation aids.

(b) Under the responsibilities defined in SCATANA, an FCC Support Plan for the Security Control of Non-Federal Air Navigation Aids has been developed by the Commission. The FCC Support Plan defines responsibilities, procedures, and instructions in consonance with SCATANA which will effect control of non-Federal air navigation aids when SCATANA is implemented. It permits the use of such navigation aids by aircraft of military and civil agencies when SCATANA is implemented. The FCC Support Plan highlights those parts of SCATANA which deal specifically with non-Federal air navigation aids. SCATANA and the FCC Support Plan apply to radionavigation stations authorized by the Commission in the following manner:

(1) All licensees are subject to restrictions imposed by appropriate military authorities pursuant to SCATANA and the FCC Support Plan when an Air Defense Emergency or Defense Emergency exists or is imminent. The restrictions will be imposed through FAA Air Route Traffic Control Centers (ARTCCs).

(2) All licensees of aeronautical radionavigation (VOR/DME, ILS, MLS, LF and MF non-directional beacons) stations will comply with SCATANA implementation instructions from FAA ARTCCs as follows:

(i) Shut down the above navigation aids as directed. These instructions will permit time to land or disperse airborne aircraft, and will permit extension of time when the air traffic situation dictates.

(ii) Shut down as soon as possible stations which require more than five minutes control time, unless directed otherwise or unless such stations are essential for the handling of existing air traffic.

(iii) Operate aeronautical radionavigation stations to ensure that required stations, as indicated in flight plans, will be available for authorized aircraft flights.

(3) Licensees of aeronautical radionavigation stations will be notified of the reduction or removal of SCATANA restrictions by FAA ARTCCs when notice of the termination is issued.

(4) Licensees of aeronautical radionavigation stations may voluntarily participate in SCATANA tests as requested by an ARTCC. SCATANA testing must not interrupt the normal service of non-Federal air navigation aids.

§ 87. 397 Emergency operation.

(a) The licensee of any land station in the Aviation services, during a local emergency involving the safety of life and property may communicate in a manner other than that specified in the license (*See* § 87.395). Such emergency operations may include operation at other locations or with equipment not specified in the license or by unlicensed personnel provided that: (1) Such operations are under the control and supervision of the station licensee, (2) the emergency use is discontinued as soon as practicable upon termination of the emergency, (3) in no event shall any station transmit on frequencies other than or with power in excess of that specified in the license (4) the details of the emergency must be retained with the station license, and (5) at a controlled airport these communications must be coordinated with the FAA.

(b) The unicom frequencies listed in Subpart G may also be used for communications with private aircraft engaged in organized civil defense activities in preparation for during an enemy attack or immediately after an enemy attack. When used for these purposes, unicoms may be moved from place to place or operated at unspecified locations except at landing areas served by other unicoms or control towers.

(c) In any case in which a license for unattended operation has been granted, the Commission may at any time, for national defense, modify the license.

SUBPART O -- AIRPORT CONTROL TOWER STATIONS

§ 87. 417 Scope of service.

(a) Airport control tower stations (control towers) must limit their communications to the necessities of safe and expeditious operation of aircraft operating on or in the vicinity of the airport. Control towers provide air traffic control services to aircraft landing, taking off and taxiing on the airport as well as aircraft transiting the airport traffic area. Additionally, control towers can provide air traffic control services to vehicles operating on airport movement areas (see Subpart L) Control towers must serve all aircraft without discrimination.

(b) A control tower must maintain a continuous watch on the following frequencies during the hours of operation:

21.500 MHz
3023.0 kHz (Alaska only)
5680.0 kHz (Alaska only)

§ 87. 419 Supplemental eligibility.

Only one control tower will be licensed at an airport.

§ 87. 421 Frequencies.

The Commission will assign VHF frequencies after coordination with the FAA. Frequencies in the following bands are available to control towers. Channel spacing is 25 kHz.

118.000-121.400 MHz
121.600-121.925 MHz
123.600-128.800 MHz
132.025-135.975 MHz

(a) The frequency 123.100 MHz is available for use by control towers at special aeronautical events on the condition that no harmful interference is caused to search and rescue operations in the locale involved.

(b) Frequencies in the bands 200.0-285.0 and 325.0-405.0 kHz will only be assigned to control towers authorized to operate on at least one VHF frequency, unless a showing has been made that elimination of VHF service will not adversely affect life and property in the air.

(c) Frequencies in the band 121.600-121.925 MHz are available to control towers for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

(d) 121.500 MHz: emergency and distress only.

§ 87. 423 Hours of operation.

The control tower must render a communications service 24 hours a day unless a satisfactory showing has been made that elimination of such service will not adversely affect life and property in the air.

§ 87. 425 **Interference.**

A control tower shall not cause harmful interference to a control tower at an adjacent airport. If interference between adjacent control towers exists, the Commission will direct the licensees how to eliminate the interference.

SUBPART P -- OPERATIONAL FIXED STATIONS

§ 87. 445 Scope of service.

An operational fixed station provides control, repeater or relay functions for its associated aeronautical station.

§ 87. 447 Supplemental eligibility.

An applicant for an operational fixed station must show that:

(a) The applicant is the licensee of an aeronautical land station in the aeronautical mobile service; and

(b) Common carrier facilities are not available to satisfy the aeronautical station's requirements.

§ 87. 449 Frequencies.

The following frequencies in the 72-76 MHz band are assignable to operational fixed stations using vertical polarization, if no harmful interference is caused to TV reception on Channels 4 and 5. These frequencies are shared with the Land Mobile and the Maritime Mobile Services.

Operational frequencies in the 72-76 MHz band
Carrier frequency in MHz

72.02	72.28	72.64	72.90	75.68	75.94
72.04	72.30	72.66	72.92	75.70	75.96
72.06	72.32	72.68	72.94	75.72	75.98
72.08	72.34	72.70	72.96	75.74	
72.10	72.36	72.72	72.98	75.76	
72.12	72.38	72.74	75.42	75.78	
72.14	72.40	72.76	75.46	75.80	
72.16	72.42	72.78	75.50	75.82	
72.18	72.46	72.80	75.54	75.84	
72.20	72.50	72.82	75.58	75.86	
72.22	72.54	72.84	75.62	75.88	
72.24	72.58	72.86	75.64	75.90	
72.26	72.62	72.88	75.66	75.92	

§ 87. 451 Licensing limitations.

Operational fixed stations are subject to the following licensing limitations:

(a) A maximum of four frequencies will be assigned.

(b) Stations will not be authorized when applications indicate less than 16 km (10 miles) separation between a proposed station and a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation.

(c) Stations located between 16 km (10 miles) and 128 km (80 miles) of a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation, are secondary to TV operations within the Grade B service contour.[1]

[1] OET Bulletin No. 67, March 1988, entitled "Potential Interference from Operational Fixed Stations in the 72-76 MHz Band to Television Channels 4 and 5" describes an analytical model that can be used to calculate the potential interference that might result from a given fixed station operation. Copies of the bulletin may be obtained from the Commission's current duplication contractor. Information concerning the current duplication contractor may be obtained from the Office of Public Affairs Consumer Assistance and Small Business Division, Telephone (202) 632-5050.

SUBPART Q -- STATIONS IN THE RADIODETERMINATION SERVICE

§ 87. 471 Scope of service.

Stations in the aeronautical radiodetermination service provide radionavigation and radiolocation services.

(a) Transmissions by radionavigation land stations must be limited to aeronautical navigation, including obstruction warning.

(b) Radionavigation land test stations are used for the testing and calibration of aircraft navigational aids and associated equipment. Transmission must be limited to cases when radiation is necessary and there is no alternative.

(c) Transmissions by emergency locator transmitter (ELT) test stations must be limited to necessary testing of ELTs and to training operations related to the use of such transmitters.

§ 87. 473 Supplemental eligibility.

(a) Licenses for radionavigation land stations will be granted only to applicants who can justify the need for an aeronautical radionavigation service when the Federal Aviation Administration is not prepared to render this service.

(b) Licenses for radionavigation land test stations (MTF) will be granted only to applicants engaged in the development, manufacture or maintenance of aircraft radionavigation equipment. Licenses for radionavigation land test stations (OTF) will be granted only to applicants who agree to establish the facility at an airport for the use of the public.

(c) Licenses for ELT test stations will be granted only to applicants to train personnel in the operation and location of ELTs, or for testing related to the manufacture or design of ELTs.

§ 87. 475 Frequencies.

(a) *Frequency coordination.* The Commission will assign frequencies to radionavigation land stations and radionavigation land test stations after coordination with the FAA. The applicant must notify the appropriate Regional Office of the FAA prior to submission to the Commission of an application for a new station or for modification of an existing station to change frequency, power, location or emission. Each application must be accompanied by a statement showing the name of the FAA Regional Office notified and the date of notification.

(b) *Frequencies available for radionavigation land stations.*

(1) LORAN-C is a long range navigation system which operates in the 90-110 kHz band.

(2) Radiobeacon stations enable an aircraft station to determine bearing or direction in relation to the radiobeacon station. Radiobeacons operate in the bands 190-285 kHz; 325-435 kHz; and 510-525 kHz.

(3) Aeronautical marker beacon stations radiate a vertical distinctive pattern on 75 MHz which provides position information to aircraft.

(4) The following table lists the specific frequencies in the 108.100-111.950 MHz band which are assignable to localizer stations with simultaneous radiotelephone channels and their associated glide path station frequency from the 328.600-335.400 MHz band.

Localizer (MHz)	Glide Path (MHz)
108.100	334.700
108.150	334.550
108.300	334.100
108.350	333.950
108.500	329.900
108.550	329.750
108.700	330.500
108.750	330.350
108.900	329.300
108.950	329.150
109.100	331.400
109.150	331.250
109.300	332.000
109.350	331.850
109.500	332.600
109.550	332.450
109.700	333.200
109.750	333.050
109.900	333.800
109.950	333.650
110.100	334.400
110.150	334.250
110.300	335.000
110.350	334.850
110.500	329.600
110.550	329.450
110.700	330.200
110.750	330.050
110.900	330.800
110.950	330.650
111.100	331.700
111.150	331.550
111.300	332.300
111.350	332.150
111.500	332.900
111.550	332.750
111.700	333.500
111.750	333.350
111.900	331.100
111.950	330.950

(5) VHF omni-range (VOR) stations are to be assigned frequencies in the 112.050-117.950 MHz band (50 kHz channel spacing) and the following frequencies in the 108-112 MHz band:

108.200	109.200	110.200	111.200
108.250	109.250	110.250	111.250
108.400	109.400	110.400	111.400
108.450	109.450	110.450	111.450
108.600	109.600	110.600	111.600
108.650	109.650	110.650	111.650
108.800	109.800	110.800	111.800
108.850	109.850	110.850	111.850
109.000	110.000	111.000	112.000
109.050	110.050	111.050	

(6) The band 960-1215 MHz is available for the use of land stations and associated airborne electronic aids to air navigation. When distance measuring equipment (DME) is intended to operate with a single VHF navigation station in the 108-117.975 MHz band the DME operating channel must be paired with the VHF channel as shown in the following table:

DME Channeling and Pairing (MHz)

VHF channel	Airborne interrogating frequency	Ground reply frequency
108.000	1041.000	978.000
108.050	1041.000	1104.000
108.100	1042.000	979.000
108.150	1042.000	1105.000
108.200	1043.000	980.000
108.250	1043.000	1106.000
108.300	1044.000	981.000
108.350	1044.000	1107.000
108.400	1045.000	982.000
108.450	1045.000	1108.000
108.500	1046.000	983.000
108.550	1046.000	1109.000
108.600	1047.000	984.000
108.650	1047.000	1110.000
108.700	1048.000	985.000
108.750	1048.000	1111.000
108.800	1049.000	986.000
108.850	1049.000	1112.000
108.900	1050.000	987.000
108.950	1050.000	1113.000
109.000	1051.000	988.000
109.050	1051.000	1114.000
109.100	1052.000	989.000
109.150	1052.000	1115.000
109.200	1053.000	990.000
109.250	1053.000	1116.000
109.300	1054.000	991.000
109.350	1054.000	1117.000
109.400	1055.000	992.000
109.450	1055.000	1118.000
109.500	1056.000	993.000
109.550	1056.000	1119.000
109.600	1057.000	994.000
109.650	1057.000	1120.000
109.700	1058.000	995.000
109.750	1058.000	1121.000
109.800	1059.000	996.000
109.850	1059.000	1122.000
109.900	1060.000	997.000
109.950	1060.000	1123.000
110.000	1061.000	998.000
110.050	1061.000	1124.000
110.100	1062.000	999.000
110.150	1062.000	1125.000
110.200	1063.000	1000.000
110.250	1063.000	1126.000
110.300	1064.000	1001.000
110.350	1064.000	1127.000

110.400	1065.000	1002.000
110.450	1065.000	1128.000
110.500	1066.000	1003.000
110.550	1066.000	1129.000
110.600	1067.000	1004.000
110.650	1067.000	1130.000
110.700	1068.000	1005.000
110.750	1068.000	1131.000
110.800	1069.000	1006.000
110.850	1069.000	1132.000
110.900	1070.000	1007.000
110.950	1070.000	1133.000
111.000	1071.000	1008.000
111.050	1071.000	1134.000
111.100	1072.000	1009.000
111.150	1072.000	1135.000
111.200	1073.000	1010.000
111.250	1073.000	1136.000
111.300	1074.000	1011.000
111.350	1074.000	1137.000
111.400	1075.000	1012.000
111.450	1075.000	1138.000
111.500	1076.000	1013.000
111.550	1076.000	1139.000
111.600	1077.000	1014.000
111.650	1077.000	1140.000
111.700	1078.000	1015.000
111.750	1078.000	1141.000
111.800	1079.000	1016.000
111.850	1079.000	1142.000
111.900	1080.000	1017.000
111.950	1080.000	1143.000
112.000	1081.000	1018.000
112.050	1081.000	1144.000
112.100	1082.000	1019.000
112.150	1082.000	1145.000
112.200	1083.000	1020.000
112.250	1083.000	1146.000
112.300	1094.000	1157.000
112.350	1094.000	1031.000
112.400	1095.000	1158.000
112.450	1095.000	1032.000
112.500	1096.000	1159.000
112.550	1096.000	1033.000
112.600	1097.000	1160.000
112.650	1097.000	1034.000
112.700	1098.000	1161.000
112.750	1098.000	1035.000
112.800	1099.000	1162.000
112.850	1099.000	1036.000
112.900	1100.000	1163.000
112.950	1100.000	1037.000
113.000	1101.000	1164.000
113.050	1101.000	1038.000
113.100	1102.000	1165.000
113.150	1102.000	1039.000
113.200	1103.000	1166.000
113.250	1103.000	1040.000
113.300	1104.000	1167.000
113.350	1104.000	1041.000
113.400	1105.000	1168.000
113.450	1105.000	1042.000
113.500	1106.000	1169.000
113.550	1106.000	1043.000
113.600	1107.000	1170.000
113.650	1107.000	1044.000
113.700	1108.000	1171.000
113.750	1108.000	1045.000
113.800	1109.000	1172.000
113.850	1109.000	1046.000
113.900	1110.000	1173.000
113.950	1110.000	1047.000
114.000	1111.000	1174.000
114.050	1111.000	1048.000
114.100	1112.000	1175.000
114.150	1112.000	1049.000
114.200	1113.000	1176.000
114.250	1113.000	1050.000
114.300	1114.000	1177.000
114.350	1114.000	1051.000
114.400	1115.000	1178.000
114.450	1115.000	1052.000
114.500	1116.000	1179.000
114.550	1116.000	1053.000
114.600	1117.000	1180.000
114.650	1117.000	1054.000
114.700	1118.000	1181.000
114.750	1118.000	1055.000
114.800	1119.000	1182.000
114.850	1119.000	1056.000
114.900	1120.000	1183.000
114.950	1120.000	1057.000
115.000	1121.000	1184.000
115.050	1121.000	1058.000
115.100	1122.000	1185.000
115.150	1122.000	1059.000
115.200	1123.000	1186.000
115.250	1123.000	1060.000
115.300	1124.000	1187.000
115.350	1124.000	1061.000
115.400	1125.000	1188.000
115.450	1125.000	1062.000
115.500	1126.000	1189.000
115.550	1126.000	1063.000
115.600	1127.000	1190.000
115.650	1127.000	1064.000
115.700	1128.000	1191.000
115.750	1128.000	1065.000
115.800	1129.000	1192.000
115.850	1129.000	1066.000
115.900	1130.000	1193.000
115.950	1130.000	1067.000
116.000	1131.000	1194.000
116.050	1131.000	1068.000
116.100	1132.000	1195.000
116.150	1132.000	1069.000
116.200	1133.000	1196.000
116.250	1133.000	1070.000
116.300	1134.000	1197.000
116.350	1134.000	1071.000
116.400	1135.000	1198.000
116.450	1135.000	1072.000
116.500	1136.000	1199.000
116.550	1136.000	1073.000
116.600	1137.000	1200.000
116.650	1137.000	1074.000
116.700	1138.000	1201.000
116.750	1138.000	1075.000
116.800	1139.000	1202.000
116.850	1139.000	1076.000
116.900	1140.000	1203.000
116.950	1140.000	1077.000
117.000	1141.000	1204.000
117.050	1141.000	1078.000
117.100	1142.000	1205.000
117.150	1142.000	1079.000
117.200	1143.000	1206.000
117.250	1143.000	1080.000
117.300	1144.000	1207.000
117.350	1144.000	1081.000
117.400	1145.000	1208.000
117.450	1145.000	1082.000
117.500	1146.000	1209.000
117.550	1146.000	1083.000
117.600	1147.000	1210.000
117.650	1147.000	1084.000
117.700	1148.000	1211.000
117.750	1148.000	1085.000
117.800	1149.000	1212.000
117.850	1149.000	1086.000
117.900	1150.000	1213.000
117.950	1150.000	1087.000

(7) 1300-1350 MHz: The use of this band is restricted to surveillance radar stations and associated airborne transponders.

(8) 1544-1660.5 MHz: The use of this band is limited to:

(i) 1544-1545 MHz – Tramsmission from satellite-borne stations (space-to-Earth) in the mobile-satellite service concerning distress and safety operations.

(ii) 1545-1559 MHz – Aeronautical mobile-satellite (R) (space-to-Earth). Transmissions from terrestrial aeronautical stations directly to aircraft stations, or between air-

craft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

(iii) 1559-1626.5 MHz -- Airborne electronic aids to air navigation and any associated land stations.

(iv) 1626.5-1645.5 MHz -- Maritime mobile-satellite service (Earth-to-space).

(v) 1645.5-1646.5 MHz -- Transmissions from earth stations (Earth-to-space) in the mobile-satellite service concerning distress and safety operations.

(vi) 1646.5-1660.5 MHz -- Aeronautical mobile-satellite (R) (Earth-to-space).

(vii) Radio altimeters licensed in the frequency band 1600-1660 MHz as of July 1, 1971 may continue to be licensed until international standardization requires the discontinuance of radio altimeters in this band. Applications for type acceptance of new radio altimeters in this band will not be accepted.

(9) 2700-2900 MHz: Non-Government land-based radars may be licensed. U.S. Government coordination is required. Applicants must demonstrate a need for the service which the Government is not prepared to render.

(10) 5000-5250 MHz: This band is to be used for the operation of the international standard system (microwave landing system).

(11) 9000-9200 MHz: This band is available to land-based radars. Stations operating in this band may receive interference from stations operating in the radiolocation service.

(12) 14,000-14,400 MHz: This band is available for use in the aeronautical radionavigation service.

(13) 15,400-15,700 MHz: This band is available for use of land stations associated with airborne electronic aids to air navigation.

(14) 24,250-25,250, 31,800-33,400 MHz: In these bands, land-based radionavigation aids are permitted where they operate with airborne radionavigation devices.

(c) *Frequencies available for radionavigation land test stations.*

(1) The frequencies set forth in § 87.187(c), (e) through (j) and § 87.475 (b)(6) through (b)(10), (b)(12) may be assigned to radionavigation land test stations for the testing of aircraft transmitting equipment which normally operate on these frequencies and for the testing of land-based receiving equipment which operate with airborne radionavigation equipment.

(2) The frequencies available for assignment to radionavigation land test stations for the testing of airborne receiving equipment are 108.000 and 108.050 MHz for VHF omni-range; 108.100 and 108.150 MHz for localizer, 334.550 and 334.700 MHz for glide slope; 978 and 979 MHz (X channel)/1104 MHz (Y channel) for DME; 1030 MHz for ATC radar beacon transponders; and 5031.0 MHz for microwave landing systems. Additionally, the frequencies in paragraph (b) of this section may be assigned to radionavigation land test stations after coordination with the FAA. The following conditions apply:

(i) The maximum power authorized on the frequencies 108.150 and 334.550 MHz is 1 milliwatt. The maximum power authorized on all other frequencies is one watt.

(ii) The pulse repetition rate (PRR) of the 1030 MHz ATC radar beacon test set will be 235 pulses per second (pps) +5pps.

(iii) The assignment of 108.000 MHz is subject to the condition that no interference will be caused to the reception of FM broadcasting stations and stations using the frequency are not protected against interference from FM broadcasting stations.

(d) *Frequencies available for ELT test stations.* The frequencies available for assignment to ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800 121.850, and 121.900 MHz. Licensees must:

(1) Not cause harmful interference to voice communications on these frequencies or any harmonically related frequency.

(2) Coordinate with the appropriate FAA Regional Spectrum Management Office prior to each activation of the transmitter.

87. 477 Condition of grant for radionavigation land stations.

Radionavigation land stations may be designated by the FAA as part of the National Airspace System. Stations so designated will be required to serve the public under IFR conditions. This condition of grant is applicable to all radionavigation land stations.

§ 87. 479 Harmful interference to radionavigation land stations.

(a) Military or other Government stations have been authorized to establish wide-band systems using frequency-hopping spread spectrum techniques in the 960-1215 MHz band. Authorization for a Joint Tactical Information Distribution Systems (JTIDS) has been permitted on the basis of non-interference to the established aeronautical radionavigation service in this band. In order to accommodate the requirements for the system within the band, restrictions are imposed. Transmissions will be automatically prevented if:

(1) The frequency-hopping mode fails to distribute the JTIDS spectrum uniformly across the band;

(2) The radiated pulse varies from the specified width of 6.4 microseconds +5%;

(3) The energy radiated within +7 MHz of 1030 and 1090 MHz exceeds a level of 60 dB below the peak of the JTIDS spectrum as measured in a 300 kHz bandwidth. The JTIDS will be prohibited from transmitting if the time slot duty factor exceeds a 20 percent duty factor for any single user and a 40 percent composite duty factor for all JTIDS emitters in a geographic area.

(b) If radionavigation systems operating in the 960-1215 MHz band experience interference or unexplained loss of equipment performance, the situation must be reported immediately to the nearest office of the FAA, the National Telecommunications and Information Administration, Washington, D.C. 20504, or the nearest Federal Communications Commission Field office. The following information must be provided to the extend available:

Name, call sign and category of station experiencing the interference;

Date and time of occurrence:

Geographical location at time of occurrence;

Frequency interfered with;

Nature of interference; and

Other particulars.

§ 87.481 Unattended operation of domestic radiobeacom stations.

(a) Radiobeacoms may be licensed for unattended operation. An applicant for unattended operations must provide information about the following:

(1) The transmitter is crystal controlled and specifically ddesigned for radiobeacon service and capable of transmitting by self-actuation means;

(2) The emissions of the transmitter must by continuously monitored by a licensed operator, or by a direct positive automatic monitor, supplemented by aural monitoring at suitable intervals;

(3) If as a result of aural monitoring it is determined that a deviation from the terms of the station license has occurred, the transmitters must be disabled immediately by a properly authorized person. If automatic monitoring is used, the monitor must insure that the operation of the transmitter meets the license terms or is disabled;

(4) The time, including travel time,required for a properly authorized person to disable the transmitter;

(5) The equipment must be inspected at least every 180 days. Results of inspections must by kept in the station mainterance records;

(6)The transmitter is not operable by or accessible to, other than authorized persons;

(7) The transmitter is in a remote location.

(8) Authority for unattended operation must be expressly stated in the station license.

SUBPART R -- CIVIL AIR PATROL STATIONS

§ 87. 501 Scope of service.

Civil Air Patrol land and mobile stations must be used only for training, operational and emergency activities of the Civil Air Patrol.

(a) Civil Air Patrol land and mobile stations may communicate with other land and mobile stations of the Civil Air Patrol. A Civil Air Patrol land station may be moved from its authorized location for temporary operation in the same general area for short periods of time not to exceed 72 hours.

(b) When engaged in training or on actual missions in support of the U.S. Air Force Civil Air Patrol stations may communicate with U.S. Air Force stations on the frequencies specified in Subpart E.

§ 87. 503 Supplemental eligibility.

Licenses for Civil Air Patrol land and mobile stations will be issued only to Wings or the Headquarters of the Civil Air Patrol. All applications must be submitted to the Commission via Civil Air Patrol Headquarters, Maxwell, ARB. A single fleet license will be issued to Civil Air Patrol Headquarters and to each Civil Air Patrol Wing to authorize all Civil Air Patrol Station transmitters operated by that Wing or Headquarters.

§ 87. 505 Frequencies.

The assigned frequencies available for assignment to Civil Air Patrol land and mobile stations are contained in the frequency table in Subpart E. The frequency, emission and maximum power will be determined by Headquarters Civil Air Patrol in accordance with the Civil Air Patrol Communications Plan.

SUBPART S -- AUTOMATIC WEATHER OBSERVATION STATIONS

§ 87. 525 Scope of service.

Automatic weather observation stations must provide up-to-date weather information including the time of the latest weather sequence, altimeter setting, wind speed and direction, dewpoint, temperature, visibility and other pertinent data needed at airports having neither a full-time control tower nor a full-time FAA Flight Service Station. When a licensee has entered into an agreement with the FAA, an automatic weather observation station may also operate as an automatic terminal information station during the control tower's operating hours.

§ 87. 527 Supplemental eligibility.

(a) Licenses will be granted only upon FAA approval.

(b) Eligibility for an automatic weather observation station or an automatic terminal information station is limited to the owner or operator of an airport or to a person who has entered into a written agreement with the owner or operator for exclusive rights to operate and maintain the station. Where applicable a copy of the agreement between the applicant and owner or operator of the airport must be submitted with an application.

(c) Only one automatic weather observation station or an automatic terminal information station will be licensed at an airport.

§ 87. 529 Frequencies.

Prior to submitting an application, each applicant must notify the nearest appropriate FAA Regional Spectrum Management Office. Each application must be accompanied by a statement showing the name of the FAA Regional Office and date notified. The Commission will assign the frequency. Normally frequencies available for air traffic control operations set forth in Subpart E will be assigned to automatic weather observation stations and to automatic terminal information stations. When a licensee has entered into an agreement with the FAA to operate the same station as both an automatic weather observation station and as an automatic terminal information station, the same frequency will be used in both modes of operation.

FOOTNOTES

[1] General aviation encompasses all facets of civil aviation except certificated air carriers and large commercial aircraft operators. For example, corporate jets, light single engine aircraft and sailplanes are all considered within the "general aviation" classification.

[2] Air traffic control, where available, is provided by the Federal Aviation Administration(FAA).

[3] 49 Fed. Reg. 15,083 (1984); 55 RR 2d 1369 (1984).

[4] FSS are FAA operated facilities which provide air traffic services including pilot briefings, enroute communications, assistance in emergency situations, relay of ATC clearances, broadcast

of weather and national airspace information, processing of flight plans and monitoring of navigation aids. There are approximately 300 airports with FSS.

[5] At airports with a unicom but no control tower or FSS, the unicom frequency is designated as the CTAF frequency.

[6] Report and Order, Docket No. 20123, 64 FCC 2d 573 (1977).

[7] Report and Order, PR Docket No. 83-990, *supra*.

[8] As the sole general aviation air-to-air frequency for fixed wing aircraft, 122.750 MHz satisfied the needs of pilots operating under visual flight rules who wish to use a "buddy system" in flight, *i.e.*, to communicate on a common frequency.

[9] *See* Appendix 7 of the International Radio Regulations (Geneva, 1979) and Section 87.65(a)(5) of the Commission's Rules, 47 C.F.R. § 87.65(a)(5).

[10] Section 87.253(a) of the Rules, 47 C.F.R. § 87.253(a), states that unicom applicants need not specify a frequency as the Commission will make the final determination. Applicants may state a preference which will be taken into consideration. Currently such preferences are granted as a matter of policy.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

A.S.D. ANSWER SERVICE, INC.	**CC DOCKET NO. 82-587** File No. 23194-CD-P-(01)-82 *et al.*
B.W. COMMUNICATIONS, INC.	**CC DOCKET NO. 82-588** File No. 23259-CD-P-(01)-82 *et al.*
P.A.L. COMMUNICATIONS SYSTEMS, INC.	**CC DOCKET NO. 82-589** File No. 23168-CD-P-(01)-82 *et al.*
VINEYARD COMUNICATIONS, INC.	**CC DOCKET NO. 82-590** File No. 23199-CD-P-(01)-82 *et al.*

For authority to construct new one-way paging stations in the Domestic Public Land Mobile Radio Service on 34 and 43 MHz frequencies at various locations throughout the United States

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 1988; Released: July 7, 1988

By the Commission: Commissioner Quello concurring in the result; Commissioner Dennis not participating.

1. This proceeding involves applications filed by A.S.D. Answer Service, Inc. (ASD), B.W. Communications, Inc. (BW), Vineyard Comunications, Inc. (Vineyard), and P.A.L. Communications Systems, Inc. (PAL) for new paging facilities in the domestic public land mobile radio service (DPLMRS). We will refer to these parties collectively as "the Applicants." The Commission designated the paging applications for hearing on issues to determine: the relationships between Graphic Scanning Corp. (Graphic) and the Applicants; whether Graphic is a real party in interest behind the Applicants; and whether the Applicants and/or Graphic exhibited a lack of candor or intentionally misrepresented material facts to the Commission.

2. In order to expedite the final resolution of this proceeding, but keep the complexity of the issues and the number of parties involved manageable, the Commission did not designate for hearing the mutually exclusive applications filed by common carriers who compete with Graphic or those filed by Graphic's subsidiary corporations. The Commission said that the findings and conclusions in this proceeding would be incorporated into the records of any hearings involving Graphic's applications. *Order Designating Applications for Hearing*, 47 Fed. Reg. 40896 (Sept. 16, 1982). In other licensing proceedings, the Commission deferred action on allegations concerning Graphic's qualifications that were being considered in this proceeding. The ALJs were directed to "condition any award to take account of any action the Commission may take" here. *Advanced Mobile Phone Services*, 91 FCC 2d 512, 520 n.19 (1982).

3. In an initial decision, FCC 85D-3 (Jan. 9, 1985), the ALJ found that Graphic was the real party in interest behind the Applicants, and that the Applicants and Graphic were lacking in candor and intentionally misrepresented material facts to the Commission. The ALJ concluded that the Applicants are not qualified to be Commission licensees and he denied their applications. Exceptions to the initial decision were filed by Graphic, ASD, PAL, Vineyard and BW.

4. In a memorandum opinion and order, the Commission approved an agreement settling this proceeding. *A. S. D. Answer Service, Inc.*, 1 FCC Rcd 753 (1986). Pursuant to the settlement agreement, Graphic will dismiss all low-band paging applications (approximately 200), surrender all of its 20 low-band paging construction permits in the markets affected by the *ASD* proceeding, and surrender its licenses for paging systems in Portland, Oregon, and Houston, Texas, and serving Phoenix and Tucson, Arizona; the Applicants will dismiss all of their low-band applications considered in this proceeding; and Graphic and the Applicants will refrain from refiling for *ASD* -related low-band frequencies for one year.

5. The Commission also vacated the conclusions contained in the initial decision. *Id.* at 756 ¶ 28. Although the Commission did not disturb the ALJ's findings of fact, it determined that they would not apply to Graphic's present, restructured management. *Id.* at 753 ¶ 6. After the release of the initial decision, Graphic's shareholders elected a new board of directors. None of Graphic's principals at the time of the alleged misconduct is now either a member of the current board of directors or active in Graphic's management (except for one board member who was not involved in the alleged misconduct). The Commission specified that the ALJ's findings would be included in the record of any hearing regarding former Graphic principals who were active in the firm's management at the time of the alleged misconduct if they subsequently become active in the management of Graphic, or own Graphic assets other than through stock ownership, or become applicants for Commission licenses. *Id.* at 756 ¶ 6. However, the Commission also held that the findings would not apply to Graphic's former principals to the extent that they may seek to acquire Graphic's non-regulated assets. *Id.* at 756 ¶ 26. Barry Yampol, Graphic's former chairman, currently owns approximately 17 percent of Graphic's stock.

6. Now before the Commission are a Petition for Partial Reconsideration, filed December 22, 1986 by Yampol; an Application for Review filed December 23, 1986 and a Erratum filed December 24, 1986 by Pocono Mobile Radio Telephone Company, Inc. (Pocono); an Opposition filed January 2, 1987 by Graphic; a Motion to Dismiss or Deny Application for Review, filed January 6, 1987 by Graphic;[1] and Replies filed January 9, 1987 by Yampol and Pocono. Pocono, which is involved in a comparative hearing with Graphic subsidiary for facilities on 454.075 MHz, argues that the Commission should either retain the ALJ's conclusions for consideration in Pocono's comparative proceeding or dismiss the mutually exclusive applica-

tion of Graphic's subsidiary as part of the settlement agreement in this proceeding. Yampol objects to that part of the settlement that retains the ALJ's findings for consideration in any future hearings involving Graphic's former principals.

7. *Pocono's Petition:* Pocono argues that the record in the *ASD* proceeding reflects on the qualifications of Graphic and its subsidiaries to be Commission licensees and is therefore relevant in Pocono's comparative proceeding. It asserts that Graphic cannot avoid culpability by changing its management, and that, in any event, Yampol continues to own a significant interest in Graphic. Pocono's arguments were fully considered and rejected in the memorandum opinion and order approving the settlement agreement. 1 FCC Rcd at 754-55 ¶¶ 12-18. It is well settled that the Commission will not entertain a petition for reconsideration for the purpose of debating matters that it previously addressed and fully resolved. *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), aff'd sub nom. *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir.), cert. denied, 383 U.S. 967 (1966).

8. In approving the *ASD* settlement, we reviewed the record and concluded that, in light of the ALJ's findings, the changes in Graphic's management, and the dismissal and surrender of certain applications, permits and licenses, there were no unresolved questions that would warrant Graphic's disqualification in other licensing proceedings. Moreover, in *Policy Regarding Character Qualifications in Broadcast Licensing* (*Character Policy Statement*), 102 FCC 2d 1179, 1230-32 ¶¶ 110-113 (1986), we said that, although we will continue to consider "character" as a "qualification" matter, it would not be considered for comparative purposes in broadcast proceedings. We further determined that the *Character Policy Statement* would apply to pending proceedings. *Id.* at 1235 ¶ 121. The application of such evolving Commission policies in pending proceedings is firmly grounded in Commission precedent. E.g., *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 399-400 (1965). Although the policies under which we consider character as a basic qualification matter in the broadcast context differ from those raised in common carrier proceedings, see *Character Policy Statement*, 102 FCC 2d at 1202 n.52, and *TeleSTAR, Inc.*, 3 FCC Rcd 2860, 2866 ¶ 48 (1988), we see no reason to apply a different standard concerning comparative evaluations in non-broadcast proceedings. Thus, the *ASD* record is not relevant to *comparative* proceedings involving Graphic's applications, and Pocono has not been improperly deprived of any right to a hearing by our approval of the settlement agreement.

9. *Yampol's Petition:* Yampol argues that vacating the findings is consistent with the public interest goals of the settlement. He asserts that by retaining the findings, the Commission has increased the probability of further litigation on the issues raised in this proceeding. He also argues that the Commission retained the findings without clearly explaining the extent to which it had considered the exceptions and reviewed the findings. Moreover, Yampol claims that the review was inadequate because he is unfairly implicated in alleged misconduct by material errors in the findings. Yampol asserts that retaining the findings is legally impermissible, citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950); *A. L. Mechling Barge Lines v. United States*, 368 U.S. 324, 329 (1961); and *Constance J. Wodlinger*, FCC 85-335 (July 10, 1985). Yampol also asserts that the ALJ's findings are not *res judicata* with respect to his qualifications and that he should be allowed to fully test the veracity and significance of the ALJ's findings in any subsequent proceeding.

10. In the memorandum opinion and order approving the settlement agreement, we found no impediment to including the ALJ's findings in the record of any future administrative hearings concerning proposals where the qualifications of Graphic's former principals to be Commission licensees are under consideration. We determined that the principals would be able to challenge the significance and weight of the ALJ's findings in the *ASD* proceeding at that time. *ASD*, 1 FCC Rcd at 757 n.16. We agree with Yampol, however, that the findings are not *res judicata* with respect to the qualifications of Graphic's former principals.

11. *Res judicata* "precludes relitigation of issues actually litigated and determined in a prior suit." *Lawlor v. National Screen Service*, 349 U.S. 322, 326 (1955). It "thus encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes." *Brown v. Felsen*, 442 U.S. 127, 131 (1979). It would be, however, "a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n.7 (1979); *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 593 (1974). Here, Graphic's principals were not parties to the proceeding, their individual qualifications were not in question, and they have not had a full opportunity to be heard on the record. Thus, in order to protect the due process rights of Graphic's former principals in case it becomes necessary to evaluate their qualifications, we will modify footnote 16 of our 1986 Memorandum Opinion and Order approving the settlement agreement to allow them to "deny, explain or clarify" the ALJ's findings in any subsequent proceeding. *Peoples Broadcasting Corp.*, 92 FCC 2d 1303, 1305 ¶ 4 (Rev. Bd. 1983), and 92 FCC 2d 1330, 1331-32 ¶ (Admin.L.J. 1982); *Red Lion Broadcasting Co.*, 63 FCC 2d 145, 145 ¶ 2 (1977).

12. In approving the settlement agreement in *ASD*, we also reviewed the findings and found that there were no material disputes concerning the accuracy of the ALJ's findings. 1 FCC Rcd at 756 ¶ 21. Yampol, citing Graphic's exceptions to the initial decision, argues that there are material disputes concerning the accuracy of the findings. The exceptions, however, were filed while Yampol -- even though not a party -- was chairman of Graphic. The exceptions conceded that "for the most part the findings of fact with respect to the real party in interest issue are a neutral recitation of the evidence . . . and are not disputed." Graphic's Exceptions at 9. In any event, no prejudice flows to Yampol from our retaining the findings because we are drawing no adverse conclusions and because Yampol or any other Graphic principal can fully test those findings in any subsequent proceeding concerning his qualification to be a licensee.

13. The Supreme Court has said that the usual practice is to vacate decisions when the issues become moot before the decisions can be reviewed; the reason for doing so is "to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *Munsingwear*, 340 U.S. at 41. We are vacating the ALJ's conclusions so that no legal consequences flow from the ALJ's determinations beyond the terms of the settlement.

14. Here, however, we reviewed the ALJ's findings of fact in conjunction with our approval of the *ASD* settlement. We concluded that these findings are relevant to the qualifications of Graphic's former principals. Graphic's former principals appeared as witnesses and were the primary players in the conduct documented in the record of the *ASD* proceeding. It would be an inefficient use of the Commission's resources to recompile that record if it subsequently becomes necessary to evaluate the qualifications of those principals. Moreover, Graphic's principals will be afforded a full opportunity to test those findings in any subsequent proceeding. Thus, the procedures that we have adopted protect Graphic's former principals from an unwarranted use of the ALJ's findings, and our retention of those findings is fully justified under the circumstances presented here.

15. Yampol's remaining arguments were fully considered and rejected in the memorandum opinion and order approving the settlement, and they are entitled to no further consideration. *See WWIZ*, 37 FCC at 686 ¶ 2.

16. ACCORDINGLY, IT IS ORDERED, That the Motion to Dismiss Application for Review, filed January 6, 1987 by Graphic Scanning Corp., IS DENIED.

17. IT IS FURTHER ORDERED, That the Application for Review filed December 23, 1986 and relabeled as a Petition for Reconsideration, by Erratum filed December 24, 1986 by Pocono Mobile Radio Telephone Company, Inc., IS DENIED; that the Petition for Partial Reconsideration, filed December 22, 1986 by Barry Yampol IS GRANTED to the extent indicated herein and in all other respects IS DENIED; and that footnote 16 of the Memorandum Opinion and Order, 1 FCC Rcd 753, 757 n.16, IS MODIFIED as reflected in paragraph 10 above.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTE

[1] Pocono initially labeled its pleading as an "Application for Review." It then filed an Erratum asserting that its pleading was mislabeled and is a Petition for Reconsideration. Graphic argues that Pocono's Application for Review was procedurally improper, and that the Erratum changing the title to a petition for reconsideration was untimely. Although Pocono's pleading was erroneously captioned, it was timely filed and advised Graphic of Pocono's arguments. Graphic has not demonstrated that it was prejudiced by the erroneous caption. Dismissal of Pocono's pleading would elevate the form of the pleading over its substance. Therefore, we will deny Graphic's request for dismissal of Pocono's petition.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMSAT GENERAL CORPORATION — File No. 5543-DSS-AL-87(2)

For Consent to Assignment of Authorizations for the COMSTAR D-2 and D-4 Domestic Fixed-Satellites

and

JOHN PEREIRA, TRUSTEE IN BANKRUPTCY FOR ARGO COMMUNICATIONS CORPORATION — File Nos. 5544-DSE-AL-87(9) 10364-CF-AL(15)-87

For Consent to Assignment of Authorizations for Domestic Fixed-Satellite Earth Stations and Point-to-Point Microwave Radio Stations

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 1988; Released: July 7, 1988

By the Chief, Common Carrier Bureau:

1. COMSAT General Corporation (COMGEN) and John Pereira, Trustee in Bankruptcy for Argo Communications Corporation (Argo), request Commission consent to assign authorizations for facilities in the Domestic Fixed-Satellite and Point-to-Point Microwave Radio Services to the Safecom Partnership (Safecom).[1] COMGEN also requests that we co-license its COMSTAR D-2 and D-4 satellites, which will be assigned to Safecom, for composite operation. For the reasons discussed below, the applications are granted in part and denied in part.[2]

I. BACKGROUND

2. Safecom is a general partnership comprised of Loron Corporation (Loron) and Chestnut Ridge Communications, Inc. (Chestnut Ridge). Loron is a wholly-owned subsidiary of COMGEN [3] and Chestnut Ridge is a wholly-owned indirect subsidiary of Timeplex, Inc. (Timeplex) and of Unisys Corporation (Unisys).[4] Safecom is owned fifty-one percent by Chestnut Ridge and forty-nine percent by Loron. The partnership has been organized for the purpose of providing digital private-line domestic communications on a common carrier basis.

3. Argo holds a number of authorizations for domestic fixed-satellite earth stations and point-to-point microwave radio stations. In January 1987, Argo came under the protection of Chapter 7 of the Bankruptcy Code (Title II of the United States Code),[5] and John Pereira was named the court-appointed Trustee of Argo. Subsequently, the Trustee and Chestnut Ridge entered into an agreement for the purchase of nine domestic fixed-satellite earth stations and fifteen point-to-point microwave stations for assignment to Safecom. The Bankruptcy Court has since approved this agreement.

4. Public notice of both the COMGEN and Argo assignment applications was given.[6] Comments on COMGEN's application were filed by Contel ASC; COMGEN and Safecom filed reply comments.

5. After the assignment applications were filed, Timeplex was acquired by Unisys.[7] Safecom and Unisys subsequently amended the pending applications, pursuant to Section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, to reflect that change in the applicant.[8] Public notice was given of the amendments,[9] and Contel ASC filed additional comments. No reply comments were filed.

6. The applications and pleadings in this proceeding present four issues for the Commission's consideration: (a) Safecom's qualifications to be a licensee in the Domestic Fixed-Satellite Service, (b) the operational viability of the COMSTAR D-2 and D-4 satellites, (c) the status of the domestic satellite authorizations to be acquired by Safecom, and (d) the indirect control of Safecom by Unisys, which has certain alien officers and directors. We will address each issue separately in the following discussion.

II. DISCUSSION

A. *Licensee Qualifications*

7. The Commission has a statutory obligation to determine whether granting an application to assign an authorization or to transfer control of a licensee will serve the public interest, convenience and necessity.[10] This determination for both the Domestic Fixed-Satellite and Point-to-Point Microwave Radio Services includes an assessment of the applicant's technical qualifications to operate the facilities in issue.[11]

8. Contel ASC claims that the COMGEN assignment application for the COMSTAR D-2 and D-4 satellites is defective because it does not address Safecom's technical qualifications to operate domestic fixed-satellites. Contel ASC notes that although COMGEN, through its Loron subsidiary, is a general partner in Safecom, Chestnut Ridge, which will be the majority partner and will be responsible for the general operation and management of the organization, is not a Commission licensee in any radio service.

9. COMGEN and Safecom assert in their reply comments that, under the parties' partnership agreement, COMGEN will provide the technical support for the satellite system. In order to evaluate Safecom's qualifications in this regard, the Bureau requested that the parties file a complete copy of their partnership agreement, including pertinent appendices on assets and services.[12] The partnership agreement stipulates that COMGEN will provide to Safecom: (a) tracking, telemetry and control services for the satellites, (b) operational supervision for the earth stations and terrestrial microwave facilities, and (c) certain other engineering, technical and professional services.

10. We note that COMGEN holds various domestic, international and maritime radio station licenses and authorizations and that its technical qualifications to operate these facilities are a matter of record with the Commis-

sion. Thus, the arrangements detailed in the partnership agreement for COMGEN's technical services are sufficient to allow us to find Safecom technically qualified to be a licensee in both the Domestic Fixed-Satellite and Point-to-Point Microwave Radio Service.

B. ***Operational Viability of COMSTAR D - 2 / D - 4***

11. Contel ASC argues that COMGEN must demonstrate that the COMSTAR D-2 and D-4 satellites are capable of providing communications services in order for the Commission to find that assignment of these authorizations is in the public interest. In this regard, Contel ASC notes that the expected useful lives for COMSTAR D-2 and COMSTAR D-4 were due to expire in 1983 and 1987, respectively. Contel ASC also claims that the Commission's Field Operations Bureau (FOB) has found no radio frequency activity from these satellites since March 1986 and no current telemetry activity.[13] Contel ASC further argues that if little or no service capability is available from these satellites, COMGEN will be assigning a bare license to Safecom and that Safecom would merely improve its position, vis-a-vis other potential applicants, to launch future spacecraft into the orbital location occupied by the COMSTAR D-2 and D-4 satellites.

12. The COMSTAR D-2 and D-4 satellites are currently colocated at 76' W.L. to operate as a "composite" satellite. Since both satellites are not fully or continuously operational, this arrangement is intended to provide maximum transponder redundancy (one-for-one backup) in case of service failure. COMSTAR D-2 was launched in September 1976 and had an expected useful life of seven years, until 1983.[14] Since 1981, however, its actual life has been extended by colocating it with other COMSTAR satellites for composite operations.[15] The COMSTAR D-4 satellite was launched in February 1981 and also had an expected useful life of seven years, until early 1988.[16] The COMSTAR D-2 and D-4 satellites were colocated at 76' W.L. in 1985 for composite operations. In order to extend further the actual useful lives of these satellites, COMGEN and Safecom have requested modification of the operating authorizations to cease north-south stationkeeping using a technique known as the "COMSAT Maneuver," thereby conserving the spacecrafts' fuel reserves.[17]

13. In order to determine whether Safecom would be able to provide the intended service to the public, the Bureau requested COMGEN to provide additional information on the current and projected operational status and condition of COMSTAR D-2 and D-4. The technical report submitted by COMGEN describes the current and projected status for the main subsystems on both satellites: electrical power, solar array, batteries, bearing and power transfer assembly (BAPTA), and transponders. COMGEN asserts that the condition of the main subsystems and the amount of fuel available on each satellite is sufficient to allow approximately seven years additional composite operation by using the COMSAT Maneuver. Transponder availability would be reduced over time, however. When these satellites were fully operational, each provided 24 transponder capacity and each had backup travelling wave tube amplifier systems (TWTAs). COMGEN estimates that, under composite operations, the total number of transponders currently available from both satellites is 24, with only 17 having backup TWTAs. COMGEN estimates that by 1994 possibly only 20 transponders will be available, and only one-half of those will have backup TWTAs.[18]

14. In responding to the Bureau's request for additional technical information, COMGEN also maintains that telemetry, tracking and control (TT&C) functions are maintained for these satellites via COMGEN earth stations. In addition, COMGEN acknowledges that COMSTAR D-2 and D-4 are currently non-operational, but it asserts that traffic will be carried on the satellites if they are allowed to operate using the COMSAT Maneuver.

15. COMGEN has provided sufficient technical information on the current status of the COMSTAR D-2 and D-4 satellites for us to conclude that, under "composite" operations, they may be capable of providing service to the public, at least for the near future. Thus, we do not believe that COMGEN is assigning a bare license, as Contel ASC claims. Also, additional circumstances exist to support COMGEN's and Safecom's efforts to return these satellites to operational status. In particular, the Bureau recently granted COMGEN and Safecom special temporary authority (STA) to operate COMSTAR D-2 and D-4 using the COMSAT Maneuver. It is now up to Safecom to demonstrate that service operations for these satellites can indeed be further extended. However, given the age and condition of these satellites, the Bureau will monitor their continued operational viability. In this regard, the STAs allowing for the operation of both satellites using the COMSAT Maneuver require COMGEN and Safecom to report periodically on the operations of the satellites, as modified.[19] In addition, Safecom will have to provide semi-annual technical assessments of COMSTAR D-2 (*see infra* para. 21).

16. Contel ASC's concern that Safecom is only attempting to improve its position, vis-a-vis other potential applicants, to launch future spacecraft into the orbital location currently assigned to COMSTAR D-2 and D-4 is easily allayed. Any authorization to Safecom to launch a replacement satellite for COMSTAR D-2 and D-4 into the 75' W.L. orbital location or any other orbital location will depend, in part, on its ability to demonstrate continued service to the public. Operation of the COMSTAR D-2 and D-4 satellites beyond their current authorized operational terms, as well as any authorization for a replacement satellite, will also be subject to Commission policies regarding efficient use of the orbit-spectrum resources.[20]

C. ***COMSTAR D - 2 and D - 4 Authorizations***

17. Although the two COMSTAR satellites have been colocated since 1985 and operating as a composite satellite, they have been operating under different types of authorizations. COMSTAR D-2 has been operating under a series of STAs since its license term expired; COMSTAR D-4 is licensed until February 1991. COMGEN now requests, as part of its assignment application, that the Commission authorize it to operate both COMSTAR D-2 and D-4 as one composite satellite under the existing license for COMSTAR D-4. COMGEN claims that this would encourage cost efficient operation of domestic satellites using techniques such as the COMSAT Maneuver.

18. Contel ASC opposes this request and argues that COMGEN should not be allowed to improve the status of an authorization, such as an STA, in an assignment proceeding. Further, Contel ASC argues that re-licensing a satellite beyond the allowed ten-year term could frustrate the Commission's policy of ensuring efficient use of the orbit. Contel ASC suggests that Safecom be granted only an STA to operate COMSTAR D-2.

19. By statute, the Commission may grant or renew a domestic satellite license for a term not to exceed ten years, or for a shorter period of time, if, in its judgment, the public interest, convenience or necessity would be served.[21] The COMSTAR D-2 satellite has already been in orbit for over eleven years, even though its estimated useful life was only seven years. In large part, the already extended life of this satellite results from its non-operational and backup status over a number of years. We note that these measures were originally taken in 1981 in response to serious concerns by both COMGEN and the Commission as to the continued reliability of this satellite because of an abnormally high deterioration rate of the battery system.[22] Although COMGEN now claims that the battery systems on both satellites can be further utilized under composite operations, it only predicts the duration of such extended use for COMSTAR D-4, not for COMSTAR D-2.[23] Further, in the area of transponder capacity, COMGEN has provided estimates, based on the composite operation of COMSTAR D-2 and D-4, showing that estimated capacity with backup amplifier systems drops off rapidly over a six-year period (*see supra* para. 13). Although COMGEN does not specify estimated capacity for each satellite, it is reasonable to suspect that a higher percentage of lost capacity will be due to failures on COMSTAR D-2, which is a much older and more depleted facility. Overall, this information raises questions about the continued long-term operational viability of COMSTAR D-2.

20. Because there are questions as to the continued long-term reliability of COMSTAR D-2, it is not appropriate to re-license the satellite for composite operation with COMSTAR D-4. These satellites have been colocated for several years and, during this time, COMSTAR D-2 has been operating under STA. We do not perceive any prejudice to Safecom by maintaining this status. In addition, COMSTAR D-2 has already been maintained in orbit beyond both its nominal seven year lifetime and the maximum ten year license term. The issue of renewing domestic satellite licenses beyond these time periods needs further consideration. The Commission on numerous occasions has stated that efficient use of the orbit-spectrum resource requires that less efficient satellites not block the implementation of state-of-the-art satellite systems.[24] As the orbital arc becomes increasingly crowded, increased service capacity must result from efficient use of available resources. Authorizing COMSTAR D-2 to continue operating under STA provides us the opportunity to continue gathering information on efficiency aspects of mature satellites without foreclosing options that may be inherent in extending the license term.

21. Thus, we find that the public interest would not be served by re-licensing COMSTAR D-2 for an additional term. Safecom has already been granted an STA to operate COMSTAR D-2.[25] We will continue to authorize its operation under STA provided Safecom is able to demonstrate that the satellite can successfully maintain operations and provide actual service to the public. In particular, Safecom will have to provide technical assessment of COMSTAR D-2's operations and projected viability, independent of COMSTAR D-4. This assessment should include a transponder loading report, describing actual utilization and available capacity, and updated reports on the spacecraft's main subsystems.

D. ***Alien Officers and Directors***

22. Through its acquisition of Timeplex, Unisys became an indirect corporate parent of Chestnut Ridge, the majority partner in Safecom. Unisys's principal business is the manufacture and marketing of mainframe computers, other information systems and peripheral equipment. It has thirty-four officers, of whom four are foreign nationals. The Senior Vice President for Corporate Marketing and Services is a Swedish citizen; two Vice Presidents/Presidents of two overseas divisions are Swiss and British citizens. Unisys also has fourteen directors, of which one is a Canadian citizen.

23. Section 310(b)(4) of the Communications Act[26] provides that the Commission may decline to grant a common carrier radio station license to a corporation directly or indirectly controlled by any other corporation of which more than 25 percent of the stock is owned by a non-United States citizen(s) or of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

24. This provision is intended to address the issue of foreign control of United States common carrier services by requiring the Commission to review and approve substantial participation by foreign nationals in such operations.[27] Section 310(b)(4), however, does not bar foreign participation in common carrier radio operations. Rather, it gives the Commission discretion in a particular case to allow foreign participation greater than the levels set out in the statute, unless the Commission finds that such action would adversely affect the public interest.[28] In the case of foreign nationals serving as officers or directors of the parent corporation, the Commission considers whether such an activity would require radio license revocation or denial of renewal.[29]

25. In this case, the alien officers and directors are those of Unisys, not the licensee. Unisys asserts that its alien officers will not exercise any control or supervision over the operations of Safecom. It also notes that the three officers are citizens of nations with friendly relations and close ties to the United States. In addition, the President and directors of Chestnut Ridge remain as they were before the Unisys-Timeplex merger. The President of Chestnut Ridge now also serves as a Senior Vice President of Unisys.

26. In light of these facts, which are set forth in the amended assignment application, we find that the presence of these three alien officers and one alien director in Unisys will not adversely affect the public interest, provided they do not exercise any control over or supervision of Safecom or any other subsidiary holding common carrier radio authorizations or otherwise subject to Section 310 of the Communications Act.

III. CONCLUSION AND ORDERING CLAUSES

27. Although we will grant COMGEN's assignment application for COMSTAR D-4, we will not re-license and assign COMSTAR D-2 under the COMSTAR D-4 authorization. Safecom can operate COMSTAR D-2 under the STA it has already been granted, subject to renewal under the terms described in this order.

28. We find that, pursuant to 47 U.S.C. § 308, Safecom is legally, technically, financially and otherwise qualified to be a licensee in the Domestic Fixed-Satellite and Point-to-Point Microwave Radio Services. In addition, we find

that, pursuant to 47 U.S.C. § 309, grant of these applications, to the extent described herein, will serve the public interest, convenience and necessity.

29. Accordingly, IT IS ORDERED that, pursuant to Section 0.291 of the Commission's rules on delegation of authority, 47 C.F.R. § 0.291, COMGEN's application (File No. 5543-DSS-AL-87(2)) for consent to assignment of a radio license IS HEREBY GRANTED for the COMSTAR D-4 satellite, provided Unisys's directors and officers who are foreign nationals do not exercise any control over or supervision of Safecom or any other subsidiary holding common carrier radio authorizations or otherwise subject to Section 310 of the Communications Act of 1934, as amended, and, in all other respects, the application IS DENIED. All existing terms and conditions applicable to the authorization held by COMGEN shall remain in full force and effect, except as modified by this or any subsequent Order.

30. IT IS FURTHER ORDERED that Argo's application (File Nos. 5544-DSE-AL-87(9); 10364-CF-AL(15)-87) for consent to assignment of radio licenses for fifteen common carrier point-to-point microwave radio stations and nine domestic fixed-satellite earth stations IS HEREBY GRANTED, provided Unisys's directors and officers who are foreign nationals do not exercise any control over or supervision of Safecom or any other subsidiary holding common carier radio authorizations or otherwise subject to Section 310 of the Communications Act of 1934, as amended. All existing terms and conditions applicable to the authorizations held by Argo shall remain in full force and effect.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Argo will assign to Safecom the following common carrier point-to-point microwave stations: Call Signs WLB-877, WHT-443, WHT-442, WHT-441, WHO-513, WHT-435, WHT-434, WLB-229, WHO-628, WLB-573, WLB-597, WLB-293, WHO-514, WHO-626, WHO-627. Argo also will assign to Safecom the following domestic earth stations: Call Signs E3847, E3845, E6148, E6836, E7540, E859956, E8968, E6042, E7988. COMGEN will assign to Safecom two 4/6 GHz domestic fixed-satellites, COMSTAR D-2 (KS27) and COMSTAR D-4 (KS29).

[2] In order for the parties to meet certain contractual commitments for the purchase of Argo's facilities, the Bureau has granted Safecom special temporary authority to control and operate the facilities that are the subject of these assignment applications. *See* Letter of Chief, Domestic Facilities Division to Counsel, Safecom (March 31, 1988).

[3] COMGEN is a wholly-owned subsidiary of Communications Satellite Corporation (COMSAT).

[4] Chestnut Ridge is a wholly-owned subsidiary of Chestnut Ridge Associates, Inc., which is a wholly-owned subsidiary of Timeplex.

[5] Argo Communciations Corp., Case No. 87B 10020 (PBA) (Bankr. S.D.N.Y. 1987).

[6] Public Notice, Report No. DS-671 (September 2, 1987).

[7] Because Timeplex was not a Commission licensee at the time of the merger with Unisys, prior Commission approval of the transaction was not required.

[8] Safecom and Unisys filed the following items to reflect Unisys's interest in the applicants: (a) a revised FCC Form 704, (b) a revised FCC Form 430, and (c) a revised Exhibit VIII of the original application. Timeplex in now a wholly-owned subsidiary of Unisys.

[9] Public Notice, Report No. DS-714 (February 10, 1988).

[10] 47 U.S.C. § 310(d).

[11] *See* 47 C.F.R. §§ 21.13(a), 25.391(b).

[12] The parties have requested confidential treatment of the complete partnership agreement that was filed in response to the Bureau's request. *See* Letter of Counsel, Safecom to Secretary, Federal Communications Commission, November 23, 1987.

[13] The FOB does periodic checks on satellite operations.

[14] COMSAT General Corp., 84 FCC 2d 547, 558 (1981).

[15] In 1981, COMSTAR D-2 was ordered colocated with COMSTAR D-1. *Id.* Later, it was colocated with COMSTAR D-3 and eventually with COMSTAR D-4. The COMSTAR D-1 and D-3 satellites are both retired from service.

[16] *Id.*

[17] Pending action on the modification applications, the Bureau has granted COMGEN and Safecom special temporary authority, pursuant to 47 U.S.C. § 309(f), to operate COMSTAR D-2 and D-4 using the COMSAT Maneuver. *See* Letter of Chief, Domestic Facilities Division to Counsel, COMGEN (February 28, 1988); Letter of Chief, Domestic Facilities Division to Counsel, Safecom (March 31, 1988).

[18] COMGEN's estimates of future transponder availability are derived from historical data and past performance of the overall COMSTAR satellite system and are based on colocated operation of COMSTAR D-2 and D-4. COMGEN has not provided information on transponder availability for the satellites individually.

[19] COMGEN and Safecom are expected to evaluate their success in meeting the objectives they claimed would be attained from using the COMSAT Maneuver: interference-free operation, maintaining location in the geostationary orbit, and extending the spacecrafts' useful lives.

[20] For example, the Commission has consistently stated that efficient orbit-spectrum use requires that satellite systems employ state-of-the-art designs. *See* Space Station Licensing, 54 Rad. Reg. 2d (P&F) 577 (1983); *see also* Assignment of Orbital Locations, 84 FCC 2d 584 (1981).

[21] 47 U.S.C. § 307(c). *See also* Common Carrier and Satellite Licensing, 53 Rad. Reg. 2d (P&F) 1514 (1983).

[22] *See* COMSAT General Corp., 84 FCC 2d 547, 557 (1981). The battery systems are the sole power source on the satellites during the two annual eclipse seasons, which last about 45 days each.

[23] In its technical report, COMGEN claims that laboratory testing begun in 1973 of a battery comparable to those used on COMSTAR D-2 and D-4 has produced good performance results for 13 years. Based on this information, COMGEN claims that the battery system on COMSTAR D-4 should perform well for an additional 6-8 years. Based on this same information, it is reasonable to conclude that the battery system on COMSTAR D-2 may only be adequate for 1-2 years additional use.

[24] *See* , *e. g.*, Licensing of Space Stations in the Domestic Fixed-Satellite Service (CC Docket No. 81-704), 54 Rad. Reg. 2d (P&F) 577 (1983); COMSAT General Corp., 2 FCC Rcd 4570 (1987).

[25] *See supra* note 2.

[26] 47 U.S.C. § 310(b)(4).

[27] *See* Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, as amended, 103 FCC 2d 511, 516-17 (1985).

[28] *Id.* at 524.

[29] *See* Data General Corp., Mimeo No. 3385 (March 26, 1986); International Telephone and Telegraph Corp., 67 FCC 2d 604 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

HELICON GROUP, LTD.,
Complainant,

v. File No. PA-85-0010

WEST PENN POWER COMPANY,
Defendant.

ORDER

Adopted: June 27, 1988; Released: July 7, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On April 15, 1988, the Helicon Group, Ltd. (Helicon), filed an amended pole attachment complaint in the above-referenced matter against the West Penn Power Company (West Penn). Since that time, Helicon and West Penn have determined that the dispute can be resolved without the need to litigate before the Commission. Therefore, by letter on June 20, 1988, Helicon moved to voluntarily dismiss its complaint. On the basis of the statements contained therein, we conclude that the proceeding should be terminated.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the rules, 47 C.F.R. § 0.291, that the complaint filed by Helicon Group, Ltd., IS DISMISSED and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 87-107

In the Matter of

Amendment of Part 15 of the
Commission's Rules Concerning
Input Selector Switches Used
In Conjunction with Cable
Television Service

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 1988; Released: July 11, 1988

By the Commission:

INTRODUCTION AND BACKGROUND

1. By this Memorandum Opinion and Order, the Commission revises the implementation plan recently adopted in the above referenced proceeding concerning standards for input selector switches used to alternate between over-the-air television service and cable television service.[1] This action is in response to petitions for reconsideration of the *Report and Order* in Gen Docket No. 87-107 (*Report and Order)*, FCC 87-357, 2 FCC Rcd 7231 (1987), filed by the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG) and the Electronic Industries Association of Japan (EIAJ). On January 27, 1988, the Commission stayed the effective date of the input selector switch standards pending resolution of the petitions for reconsideration.[2] The Commission also is denying a request by the EIAJ to reduce the switch isolation standard specified in the new rules.

2. In the *Report and Order*, the Commission, *inter alia*, amended Part 15 of its rules to extend technical regulations to all input selector, or transfer switches used by viewers to alternate between over-the-air television service and cable television service. These standards require that both external, stand-alone switches and switches built into television receivers provide at least 80 dB of isolation over the frequency range 54 to 216 MHz, and 60 dB from 216 to 550 MHz. The Commission found these levels necessary to prevent signal leakage that could disrupt the operation of other licensed radio services, including aeronautical radio navigation systems and communications. The new rules also require that all such switches that use an external power source maintain the specified isolation in the event that no external power is supplied.

3. In order to minimize the burden of compliance on the manufacturing industry, the new provisions were not to apply to switches that: 1) are manufactured or imported prior to January 28, 1988; 2) do not require an external power source and are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to final end users, i.e. consumers prior to October 28, 1988; and 3) require an external power source and are manufactured or imported on or after January 28, 1988, and are sold or otherwise distributed to end users prior to April 28, 1989.

IMPLEMENTATION PLAN

4. In its petition for reconsideration, EIA/CEG states that the above implementation plan imposes substantial, unnecessary, and unintended burdens on manufacturers of TV receivers and switching accessories. It argues that the marketing cut-off date approach adopted in the *Report and Order* is inconsistent with business realities. EIA/CEG submits that the date for beginning the implementation process comes too soon to allow manufacturers to redesign their product lines and to bring them into compliance with the new isolation standards. It states that, in general, major and minor design changes normally take the television industry 99-134 weeks and 79-97 weeks, respectively, to implement. EIA/CEG also argues that it is impossible for suppliers to control the final sale date of their products. It submits that the October 28, 1988 and April 28, 1989 cut-off dates for sale of new equipment will deter retailers and wholesalers from purchasing manufacturer's current and planned output, thereby disrupting distribution channels and the consumer marketplace. To remedy this problem, EIA/CEG requests that the Commission revise the implementation plan to apply the rules only to devices manufactured after the dates as specified in the *Report and Order*, without regard to the date of sale.

5. In its petition, the EIAJ also disputes the utility of the implementation procedures. It expresses the same concerns as EIA/CEG about the effects of imposition of marketing cut-off dates, and also contends that the period of time provided by the Commission to bring equipment into compliance with the new regulations is too short. EIAJ suggests that only the April 28, 1989, date be retained, and that it be applied solely to manufacture and importation of equipment with broadcast/cable switching capability.

6. Zenith Electronics Corporation (Zenith) and Thomson Consumer Electronics, Inc. (Thomson) filed statements in support of EIA/CEG's petition. Zenith states that the implementation deadlines should be imposed at the importation and production level, rather than at the retail sales level, to avoid disruption of product planning and market distribution functions. Thomson contends that the amended implementation provisions sought by the petitioner, although not of sufficient duration to relieve the manufacturer of all design modification, at least permits the manufacturer to control the manufacturing process in a manner that will insure compliance with the *Report and Order*.

7. Pico Macom, Inc. (Pico) filed a partial opposition to EIA/CEG's petition for reconsideration. Initially, Pico agrees with EIA/CEG that additional time might be required to bring switches built into television receivers into compliance with the new regulations due to the necessary design changes. However, it objects to any postponement of the regulations with respect to either electromechanical or electronic stand-alone switches. Pico contends that postponing the deadline by which stand-alone cable/broadcast switches must comply with the new technical requirements could harm the public by producing substantial radio frequency interference. It also argues that EIA/CEG has provided no basis for postponing the application of the standards to either mechanical or electromechanical stand-alone switches. Pico contends that the time lag between

the design and manufacture of stand-alone switches is substantially shorter than that for switches built into TV receivers. It also argues that manufacturers and retailers of stand-alone products would not be left with unsellable products after the marketing deadlines because non-complying switches could be marketed for use with TV interface devices such as VCRs and video games. Accordingly, Pico suggests that manufacture, importation, and marketing deadlines be kept as adopted for stand-alone mechanical or electromechanical switches.

8. Gill Industries, Inc. (Gill) filed an opposition to EIA/CEG's request for reconsideration. Gill is concerned in particular that the continued use of substandard switches may make it difficult for cable operators to comply with the cumulative leakage index (CLI) requirements scheduled to go into effect July 1, 1990.[3] It feels that a delay in the implementation of the rules would increase the likelihood of interference to radio services, notably aeronautical communications and navigation signals, and perpetuate a higher potential for interference between subscriber cable reception and non-subscriber over-the-air television reception. Gill therefore submits that EIA/CEG's request for a delay in the implementation of the rules be denied. Like Pico above, it asserts that no adverse impact on the equipment industry should occur, as the switches in question could still be used with other TV interface devices such as computers, video games, and VCRs, and would thus remain marketable.

9. We are persuaded by the commenters that adherence to the implementation plan adopted in the *Report and Order* could have a significant adverse economic impact on manufacturers, suppliers, and retailers of input selector switches and television reception equipment. We believe that the risk of this impact could be avoided without increasing the risk of interference to licensed radio services by modifying the implementation plan as described below. Also, in view of the fact that there has not been widespread interference resulting from the use of broadcast/cable switches currently available, we believe that the potential added harm from allowing switches which have not been verified for compliance to be sold for the additional time period, adopted herein, will be minimal.[4]

10. We agree with EIA/CEG, EIAJ, and Zenith that the imposition of marketing cut-off dates is inconsistent with business realities and design lead-time requirements. While the objective of deadlines is to limit the number of non-compliant switches that will reach the market, the effective and economical implementation of any such deadlines requires that the marketing of the affected equipment be carefully controlled so as to make a smooth, predictable transition from manufacturer through distributor and retailer to consumer. From the petitions and comments received, it has become apparent that manufacturers do not have a high degree of control with respect to the final sales date of input selector switches and television receivers equipped with such devices. We also observe that the marketing cut-off approach could lead to some confusion and uncertainty because of the fact that the switches in question can be used for purposes other than the reception of cable television signals. We now believe that this could be disruptive of the retail sales market for such switches.

11. On this basis, we are revising our plan for implementation of the broadcast/cable input selector switch technical standards to replace the marketing cut-off approach with rules that apply the new standards to equipment manufactured or imported after fixed dates as requested by petitioners. In considering the cut-off dates to specify in the revised implementation plan, we continue to believe it is desirable to shift to equipment which meets the new standards as rapidly as is reasonably practical. However, we disagree with Pico's position on the hazards of delaying the implementation to the extent that a reasonable period of time is not likely to lead to significant increases in interference or problems for cable systems in meeting the CLI standards. As we observed in the *Report and Order*, there is no indication that there are problems of interference resulting from models of switches currently available. Moreover, it does not appear that existing models of electronic switches or those planned to be introduced in the near future experience significant loss of isolation in the absence of electric power. To further minimize the potential for interference and cable system concerns about meeting the CLI standards, we recommend that cable operators encourage their subscribers to use switches that have been verified as complying with the new standards when installing off-the-air reception capability in conjunction with cable service. In the unlikely event that the continued use of substandard switches were determined to be affecting a cable system's ability to meet the CLI requirements, the cable operator would, of course, have the right to discontinue service to subscribers using such switches in accordance with the provisions of Section 76.617(b) of our rules.[5]

12. To conclude, we recognize that the amount of time necessary to redesign and market equipment varies with its complexity. That is, the amount of time necessary to redesign stand-alone mechanical switches is less than that for stand-alone electronic switches, and that television receivers with built-in switches require more time than either of the other two types of devices. Accordingly, the revised implementation plan will provide for compliance with the new isolation requirements as follows:

1) Stand-alone mechanical switches manufactured or imported on or after August 19, 1988;

2) Stand-alone electronic switches manufactured or imported on or after October 28, 1988;

3) Switches built into television receivers manufactured or imported on or after April 28, 1989.

These dates reflect our recognition of the relative difficulty of revising the designs of the three types of switches. We believe this new schedule provides an appropriate balance of the approximate time periods necessary to avoid disruption of the production and marketing of the various types of equipment affected by the rules and the need to bring such equipment into compliance therewith. We also wish to point out that switches that are manufactured or imported prior to the cut-off dates listed above will have to comply with the non-interference requirements of Section 15.3 and all operating conditions set out in Part 76 of our rules.

13. In a related matter, on February 4, 1988, Gill filed a *Motion for Stay* in the matter of Section 76.66 of the Commission's rules concerning input selector switches used in conjunction with cable television service, and a *Motion for Stay* in the matter of Section 76.611 of the Commission's rules concerning cumulative leakage index

(CLI) requirements for cable systems. In its petitions, Gill notes that although the Commission had stayed the effective date of Section 76.66 pending clarification from the court, the Commission had not indicated whether it will continue its stay of the effective date of Section 76.66 while the stay of technical standards for switches remains in effect. Moreover, Gill states that the Commission has not indicated whether it will stay the effective date of the CLI requirement contained in Section 76.611 in light of the delay in implementing the technical standards for input selector switches.

14. On December 23, 1987, the Commission stayed compliance with Section 76.66 "pending further court and *Commission action* " (emphasis added).[6] Further, as stated in footnote 1 *supra*, the Commission intends to address this matter in a separate subsequent order. Gill's concern that the provisions of Section 76.66 would apply while the stay of the technical standards remained in effect is therefore premature and unfounded. Accordingly, Gill's motion for stay regarding Section 76.66 is dismissed.

15. With regard to Gill's second petition, we find no reason why cable systems can not comply with the CLI requirement contained in Section 76.611 beginning July 1, 1990. By this instant Memorandum Opinion and Order, the Commission is lifting its stay of the technical requirements for input selector switches. We believe that this action will provide sufficient time to enable compliance by cable entities. Accordingly, Gill's motion for stay for compliance with the CLI requirements is dismissed.

ISOLATION STANDARD

16. EIAJ requests that the Commission reconsider the isolation standard to set the level of required isolation over the frequency range from 54 to 216 MHz at 70 dB instead of 80 dB. It argues that the lower level is sufficient to achieve the Commission's objectives in limiting interference. EIAJ also submits that manufacturers usually must design their equipment to meet levels 10 dB above those prescribed by the Commission to assure that when deterioration occurs through time the equipment will continue to be in compliance. It contends that by requiring manufacturers to meet an 80 dB standard, the Commission has, in fact, forced them to design equipment which provides 90 dB of isolation. EIAJ states that while compliance with the standards adopted is feasible, it is difficult and necessitates a total redesign of existing equipment.

17. The Commission addressed the issue of equipment deterioration in this proceeding and considered it in the *Report and Order* in arriving at the 80 dB level of isolation.[7] The Commission stated that in the 54 to 216 MHz frequency range the 80 dB standard provides an adequate margin of protection against the normal variability of isolation and deterioration that occurs in switches. Manufacturers need not exceed the 80 dB level for the purpose of accounting for deterioration over time. Accordingly, we are not convinced that a reduction of the isolation level to 70 dB in the 54 to 216 MHz range is warranted.

RESTRUCTURING THE RULES

18. We have taken the opportunity herein to restructure the rules adopted in this proceeding. This new presentation of the rules will make it easier to determine the applicable rules sections for broadcast/cable input selector switches. Under the restructured rules, sections have been added to define a cable input selector switch and to clarify the compliance schedule.

ORDERING STATEMENTS

19. Pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.106 of the Commissions' Rules, *IT IS ORDERED* That the petitions for reconsideration of the *Report and Order* filed by parties named herein *ARE GRANTED* to the extent indicated above, and *ARE DENIED* in all other respects. *IT IS FURTHER ORDERED* That the motions for stay filed by Gill Industries, Inc. *ARE DISMISSED*. In addition, *IT IS ORDERED* That Part 15 *IS AMENDED*, as shown in the Appendix below, effective **August 25, 1988.**

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 15 is revised to read as follows:

AUTHORITY: Secs. 4, 302, 303 and 307 of the Communications Act, as amended; 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.4 is amended by adding a new paragraph (w) to read as follows:

Section 15.4 Definitions.

* * * * *

(w) *Cable input selector switch*. A transfer switch that is intended as a means to alternate between the reception of broadcast signals via connection to an antenna and the reception of cable television service.

3. Section 15.64 is revised to read as follows:

Section 15.64 Television receivers equipped with cable input selector switches.

(a) The cable input selector switch shall provide in any of its set positions isolation between the antenna and cable input terminals of at least 80 dB from 54 to 216 MHz, and at least 60 dB from 216 to 550 MHz. The 80 dB limit shall apply at the boundary between the two frequency ranges.

(b) The cable input selector switch shall be verified pursuant to Subpart J of Part 2 of this Chapter.

(c) The provisions of this section shall apply to cable input selector switches that are built into a television receiver and manufactured or imported on or after April 28, 1989.

4. Section 15.606 is amended by revising paragraph (d) to read as follows:

Section 15.606 Transfer switches.

* * * * *

(d) A cable input selector switch shall provide in any of its set positions isolation between the antenna and cable input terminals of at least 80 dB from 54 to 216 MHz, and at least 60 dB from 216 to 550 MHz. The 80 dB limit shall apply at the boundary between the two frequency ranges.

5. Section 15.616 is amended by revising paragraph (e) and modifying the title to read as follows:

Section 15.616 Authorization requirements.

* * * * *

(e) A cable input selector switch shall be verified to show compliance with the technical specifications of Section 15.606(d) pursuant to Subpart J of Part 2 of this Chapter. To determine compliance, measurements shall be made in accordance with the applicable procedures set forth in the *FCC Procedure for Measuring Cable Television Switch Isolation*, MP-9 or equivalent procedures, provided the applicant can adequately demonstrate to the Commission that such procedures are, in fact, equivalent.

6. Section 15.622 is amended by revising paragraph (b) to read as follows:

Section 15.622 Labelling requirements.

* * * * *

(b) A stand-alone cable input selector switch shall be identified pursuant to the requirements of Subpart J of Part 2 of this Chapter. In addition, a name plate or label shall be permanently attached to the device, and include the following statement:

> This device is verified to comply with FCC Rules Part 15 for use with cable television service.

7. A new Section 15.628 is added to read as follows:

Section 15.628 Compliance schedule for cable input selector switches.

The provisions of this subpart shall apply to cable input selector switches that are:

(a) Stand-alone mechanical and manufactured or imported on or after August 19, 1988;

(b) Stand-alone electronic and manufactured or imported on or after October 28, 1988; or,

(c) Built into a television receiver and manufactured or imported on or after April 28, 1989.

Cable input selector switches manufactured or imported prior to the dates listed above need only to comply with the provisions of Section 15.3 and Part 76.

FOOTNOTES

[1] On January 29, 1988, the United States Court of Appeals for the District of Columbia clarified, in case No. 87-1280 and 87-1301, that the court's invalidation of the must carry rules in case No. 86-1683 (D.C. Cir., December 11, 1987) does not strike down the requirements concerning input selector switches. Century Communications Inc., on February 9, 1988, petitioned the court for rehearing of the clarification order. On February 22, 1988, the court recalled its mandate regarding case No. 86-1683. On April 8, 1988, the court denied the petition for rehearing of the clarification order and vacated its February 22, 1988, recall of the mandate. The Commission intends to address the input selector switch requirements in Part 76.66 of the rules and the invalidation of the must carry rules in a separate action.

[2] *Order Granting Stay Request*, GEN Docket No. 87-107, FCC 88-27, released January 28, 1988, 3 FCC Rcd 764.

[3] *See* Section 76.611 of the Commission's rules, 47 CFR §76.611. Gill later filed a motion for stay of Sections 76.611 and 76.66 of the Commission's rules (discussed in paragraphs 13-15).

[4] *See Report and* Order, supra, paragraph 30.

[5] 47 CFR §76.617

[6] *See Order*, MM Docket No. 85-349 and GEN Docket No. 87-107, released December 23, 1987, 2 FCC Rcd 7572.

[7] *See Report and Order, supra*, at paras. 14-17.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-319

In the Matter of

Amendment of Section 73.202(b), RM-6247
Table of Allotments,
FM Broadcast Stations.
(Opelika, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. Ronald H. Livengood (petitioner) has filed a petition for rule making seeking the allotment of Channel 244A to Opelika, Alabama, as that community's first local FM service. Petitioner states that if Channel 244A is authorized, he will file an application to construct a station.

2. A staff engineering analysis reveals that Channel 244A can be allotted to Opelika, Alabama, in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is sited at least 3.9 kilometers (2.4 miles) east[1] of the community to avoid short-spacing to the construction permit issued to Station WMJJ(FM),[2] Channel 243C, Birmingham, Alabama (BPH-861218JI).

3. In view of the foregoing, we believe the public interest would be served by proposing the allotment of Channel 244A to Opelika, since it could provide a first local FM broadcast service to the community. Therefore, we shall seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Opelika, Alabama	–	244A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 29, 1988,** and reply comments on or before **September 13, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Ronald H. Livengood
P.O. Box 966
Scottsboro, AL 35678

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates at the restricted site for Channel 244A are 32-38-11 and 85-20-44.

[2] Reference coordinates at the construction permit site of Station WMJJ(FM) are 33-26-38 and 86-52-47.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-320

In the Matter of

Amendment of Section 73.202(b), RM-6314
Table of Allotments,
FM Broadcast Stations.
(Russellville, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 31, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Target Communications of Kentucky, Inc., (petitioner), licensee of Station WBVR(FM), Russellville, Kentucky, proposing to downgrade the facilities for Station WBVR(FM) by substituting Channel 266C1 for Channel 266C. Petitioner also requests that its Class C licensee be modified to specify the Class C1 channel. Petitioner proposes to utilize its present transmitter site for Channel 266C1.[1]

2. In accordance with our established policy, we shall propose to substitute Channel 266C1 for Channel 266C at Russellville, Kentucky, and modify the license for Station WBVR(FM), accordingly. Pursuant to Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest for Channel 266C1 at Russellville.

3. Comments are invited on the proposal to amend the FM Table of Allotments (Section 73.202(b) of the Rules) with respect to the community listed below:

	Channel No.	
City	Present	Proposed
Russellville, Kentucky	266C	266C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 29, 1988,** and reply comments on or before **September 13, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Bodorff
Fisher, Wayland, Cooper
and Leader
1255 Twenty-third Avenue, N.W.
Suite 800
Washington, D.C. 20037-1125
(Attorney for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 266C1 at WBVR's present site are 36-50-40 and 86-55-11.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-317

In the Matter of

Amendment of Section 73.202(b), RM-6328
Table of Allotments,
FM Broadcast Stations.
(Lenwood, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Gary Albarez (petitioner), seeking the allotment of 297A to Lenwood, California, as that community's second local FM service. Petitioner states that he, or a corporation to be formed, will apply for the channel, if authorized, and will promptly construct the proposed station.

2. A staff engineering analysis has determined that Channel 297A can be allotted to Lenwood, California, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1] However, since Lenwood is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission must obtain concurrence of the Mexican government in the proposed use of Channel 297A at that community.

3. As the instant proposal could provide an additional local FM broadcast service to Lenwood for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Lenwood, California	285A	285A, 297A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 29, 1988,** and reply comments on or before **September 13, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Daniel F. Van Horn, Esq.
Arent, Fox, Kintner, Plotkin
& Kahn
1050 Connecticut Ave., NW
Washington, D.C. 20036-5339

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.(

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] This determination is based of the use of city reference coordinates of 34-52-30 and 117-06-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-316

In the Matter of

Amendment of Section 73.202(b), RM-6269
Table of Allotments,
FM Broadcast Stations.
(Lanai City, Hawaii)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Timothy D. Martz (petitioner), seeking to allot Channel 284A to Lanai City, Hawaii, as its first local FM service. Petitioner stated his intention to apply for use of the channel.

2. We believe that the proposal warrants consideration. The allotment can be made in compliance with the minimum distance separation requirements. The transmitter for Channel 284A is restricted to 2 kilometers (1.2 miles) southeast of Lanai City, to meet the spacing requirements to three pending applications for Channel 282C at Kaneohe, Hawaii.[1] In order to provide for a first FM allotment to Lanai City, the Commission seeks comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules with regard to that community as follows:

	Channel No.	
City	Present	Proposed
Lanai City, Hawaii	—	284A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **August 29, 1988**, and reply comments on or before **September 13, 1988**and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy D. Martz
187 Brookmere Drive
Fairfield, Connecticut 06430

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 284A, Lanai City, Hawaii at the restricted site are 20-49-06 and 156-54-22.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-439

In the Matter of

Amendment of Section 73.202(b), RM-5889
Table of Allotments,
FM Broadcast Stations.
(Lake City, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 31, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd. 6327 (1987), proposing to substitute Channel 232C2 for Channel 232A at Lake City, Florida, at the request of Holder Media, Inc. (petitioner), licensee of Station WQPD(FM), Channel 232A at Lake City. In addition, the *Notice* proposed to modify the station license to specify Channel 232C2. Comments in support of the proposal were filed by the petitioner.

2. After consideration of the proposal, we conclude that the public interest would be served by the channel substitution at Lake City, in order to provide an increase in coverage by Station WQPD(FM). To meet the spacing requirements of Section 73.207, the transmitter for Channel 232C2 must be located at least 24.1 kilometers (15 miles) west of the city to avoid short spacing to a construction permit issued to Station WWLV(FM), Daytona Beach, Florida, and to a pending application for Station WBYZ(FM), Boxley, Georgia, to upgrade its Class C1 facility to a full Class C station.[1] In accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WQPD(FM) to specify operation on Channel 232C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective , 1988, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lake City, Florida	232C2

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Holder Media, Inc. for Station WQPD(FM), Lake City, Florida, IS MODIFIED , effective **August 22, 1988,** to specify operation on Channel 232C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The restricted site coordinates are 30-08-01 and 82-52-45.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-406

In the Matter of

Amendment of Section 73.202(b), RM-5893
Table of Allotments,
FM Broadcast Stations.
(Prattville, Alabama)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 7, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 6008 (1987), issued in response to a petition for rule making filed on behalf of Downs Broadcasting, Inc. (petitioner), licensee of Station WQIM(FM), Channel 237A, Prattville, Alabama, proposing the substitution of Channel 236C2 for Channel 237A and modification of its license accordingly. In response to the *Notice*, petitioner filed supporting comments and replies, reaffirming its intention to construct the requested modified facilities. No other comments were received.

2. We believe the public interest would benefit by substituting Channel 236C2 for Channel 237A at Prattville, Alabama, since it could provide a first wide coverage area FM station to serve the community. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station WQIM(FM) to specify operation on Channel 236C2 in lieu of Channel 237A at Prattville, Alabama. As indicated in the *Notice*, Channel 236C2 can be allotted to Prattville at the petitioner's present transmitter site, which is 6.7 kilometers (4.2 miles) east[1] of the community, in conformity with Section 73.207(b) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Prattville, Alabama	236C2

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Downs Broadcasting, Inc. for Station WQIM(FM), IS MODIFIED, effective **August 22, 1988,** to specify operation on Channel 236C2 in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Reference coordinates of the specified site are 32-27-49 and 86-24-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 79-144

In the Matter of

Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices.

Amendment of Parts 1 and 80 of the Commission's Rules regarding ship earth stations.

THIRD REPORT AND ORDER
Proceeding Terminated

Adopted: June 20, 1988; Released: July 11, 1988

By the Commission

INTRODUCTION AND SUMMARY

1. Under the terms of the National Environmental Policy Act (NEPA) the Commission must ensure appropriate environmental evaluation of actions taken by them that may significantly affect "the quality of the human environment."[1] Since 1986, the Commission has required that the environmental impact from potentially hazardous radiofrequency (RF) radiation be considered when applications for certain transmitting facilities are filed.[2]

2. On May 8, 1987, the Commission released a *Third Notice of Proposed Rule Making* in General Docket 79-144 dealing with human exposure to radio-frequency (RF) radiation.[3] This NPRM proposed to amend Part 80 of the FCC's Rules to provide for the prevention of potentially hazardous exposure to RF radiation from ship earth stations and from ship radar stations.

3. Specifically, two amendments were proposed to Part 80. The first, proposed Section 80.83, specified that users must operate these stations in such a way that people would not be exposed to RF radiation in excess of the health and safety guidelines recommended by the Commission. The second amendment, proposed Section 80.227, would require that manufacturers of the transmitting equipment used by these stations provide installation and operating instructions to advise users how to avoid excessive RF radiation exposure. The intent of the proposed amendments was to minimize the need for routine environmental processing of station applications while, at the same time, minimizing the potential for environmental impact from them.

4. The Commission is today adopting a modified version of the original proposal. The Commission has decided that the record only supports requiring environmental analysis for RF radiation from ship earth stations. Comments filed in response to our *NPRM* failed to provide evidence that ship radar stations could create a human health hazard that would warrant routine environmental analysis of these RF sources. Therefore, stations covered under Part 80 other than ship earth stations will be categorically excluded from environmental analysis for RF radiation.[4]

5. In addition to the exclusion of ship radar stations, we are modifying our original proposal by adopting a revised version of the proposed amendment to Part 80 regarding environmental compliance. Although the effect is substantively the same as our original proposal, the requirement regarding environmental compliance for ship earth stations will be specified in Section 1.1307(b) of the FCC's Rules rather than in Part 80. Section 80.83 will essentially be a cross-reference to this section of the environmental rules in Part 1. Proposed Section 80.227, dealing with manufacturers, is being adopted as originally proposed.

COMMENTS

6. Six sets of comments were received in response to this NPRM. Five of the filings were made by industry groups, and comments were also filed by the U.S. Environmental Protection Agency (EPA). Industry comments were filed by:

* American Institute of Merchant Shipping (AIMS)
* Communications Satellite Corporation (COMSAT)
* COMSAT Technology Products, Inc. (CTP)
* Electromagnetic Energy Policy Alliance (EEPA)
* Raytheon Company

7. Respondents generally supported the intent of the amendments, i.e., to prevent potentially hazardous exposure. However, support for the amendments themselves was often expressed with qualifications. Some controversy remains over whether shipboard RF emitters such as ship earth stations and ship radar stations can cause significant exposures. Also, several respondents noted that the *total* shipboard RF environment should be considered, including other transmitting sources such as high frequency (HF) antennas.

8. Support for the proposed amendments was expressed by COMSAT. COMSAT, U.S. Signatory to INMARSAT, was primarily concerned about ship earth stations (SES). COMSAT agreed with the Commission's view that requiring safe installation and operation of SES's would help fulfill the Commission's responsibilities under the National Environmental Policy Act (NEPA). COMSAT noted that the proposed amendments would protect the public and workers "without imposing excessive burdens on manufacturers and users of ship earth stations."

9. COMSAT Technology Products (CTP) also expressed support for the amendments, while at the same time restating its view that Standard A ship terminals would not normally create a radiation hazard. CTP said that it had no objections to proposed Section 80.83. CTP also noted that it already provides users with information on safe distances that should be maintained from transmitting SES's, and it would not object to providing additional information in its installation and operation manuals on preventing excessive exposure. CTP stated its belief that the proposed rules in Part 80 are "reasonable means of ensuring proper installation and operation of ship earth stations."

10. AIMS is a national trade association representing some twenty-three U.S.-flag shipping companies. AIMS is still of the opinion that there is no cause for concern over RF hazards from SES's and ship radar stations. According to AIMS, this belief is based on actual field tests conducted by AIMS members on operating SES's. These field measurements showed that RF radiation levels were within the limits (five milliwatts per square centimeter) recommended by the American National Standards Institute (ANSI) for SES frequencies up to the surface of the radome. Also, according to AIMS, on commercial merchant vessels SES's are mounted on masts at least six feet above the flying bridge deck, thus minimizing risk.

11. In spite of the above information, AIMS stated that it could support the proposed amendments to Part 80. AIMS expressed its belief that the proposals are a reasonable solution and will allow compliance with the requirements of NEPA. However, AIMS requested that the amendments only apply to new installations and that existing ship installations be grandfathered.

12. In its comments, EEPA expressed the opinion that rules for controlling exposure should address the total shipboard RF environment. EEPA pointed out that a manufacturer has no control over the number or output of other RF sources at a shipboard location, and it would be impossible for a manufacturer to provide installation and operating instructions which would take into account the various environments in which the equipment might be used. Other RF transmitters on board would include HF transmitters and other communications and navigational aids.

13. It was EEPA's opinion that the primary responsibility for insuring compliance should rest with ship owners or operators. EEPA also maintained that only large commercial ships have enough RF sources to cause a potential exposure problem. Small craft, according to EEPA, have fewer RF transmitters, generating less power, and they are operated less frequently than those on large ships. For these reasons, EEPA proposed that small craft be eligible for exemption from the rules if the total RF environment on board is sufficiently limited.

14. Raytheon had serious objections to the proposed amendments. Raytheon objected to: (1) the inclusion of ship radar stations in the proposal, (2) the proposal to require manufacturers to supply information on meeting safety guidelines, and (3) the failure of the proposal to address both shipboard and non-shipboard RF sources together. In general, Raytheon stated its belief that the Commission's proposal was "unworkable, not justifiable by law, and not well designed" to provide protection from potentially hazardous RF radiation.

15. Raytheon believes that small radars on small craft should be exempted, and the proposed amendments should only be considered for larger commercial ships. Furthermore, in such cases where other RF sources are present, Raytheon maintained that exposure from all sources must be considered, not just exposure from radar.

16. Raytheon pointed to a 1975 study of marine radar carried out by the (then) Bureau of Radiological Health of the U.S. Food and Drug Administration (FDA). According to page one of the FDA report describing this study (FDA/76-8004) the purpose of the study was: (1) to estimate the range and magnitude of microwave exposure from marine radar, and (2) to determine if theoretically calculated power densities, using manufacturer's nominal parameters, are comparable to experimentally measured power densities. Raytheon noted that the FDA had concluded that, during normal scanning operation, potential exposure from marine radar was well below one milliwatt per square centimeter.

17. Raytheon noted that it recently examined its commercial marine radars. The company currently markets about 22 marine radars for commercial and small boat applications. Most operate at X-band (approximately 9.4 GHz) with average powers less than 10 watts. Higher power levels (up to 54 watts) are used in five commercial units. Peak powers range between 3 and 60 kilowatts. Raytheon said that its results showed "without exception" that potential exposures under normal operating conditions were "well below those of ANSI C95.1-1982 or most proposed guidelines for public exposure limits."

18. Raytheon stressed its belief that it is the total RF environment on a ship that should be addressed, not just that resulting from the use of radar. If the Commission issues regulations for controlling exposures on large ships, Raytheon felt that basic responsibility for compliance should rest with shipboard personnel, and FCC rules should "cooperatively mesh" with those of the Occupational Safety and Health Administration (OSHA). It was Raytheon's contention that no manufacturer "can or should be required to anticipate the diversity of environments in which his equipment may be placed to operate." Raytheon also proposed that in complex RF environments employers should provide training to their employees.

19. As mentioned previously, the only non-industry comments came from the U.S. Environmental Protection Agency (EPA). Although EPA supported the proposal, it expressed some doubt over the success of the proposal in actually preventing excessive human exposures. It was EPA's contention that if the proposed rules went into effect there would be little incentive for user compliance. The EPA felt that the proposed approach was "too passive to be effective." EPA recommended that, in conjunction with the proposal to require installation and operating instructions, the Commission should regulate or control the *quality* of the manufacturers' instructions.

20. Once such a procedure was implemented, the FCC could, according to EPA, incorporate compliance with the instructions into its licensing requirements. For example, a potential licensee could certify that the manufacturer's installation instructions would be followed and that RF safety guidelines will not be exceeded.

21. EPA expressed its belief that without these procedures the "minimal" voluntary requirements of the *NPRM* would "not provide sufficient protection to human health." EPA was also concerned that the proposed rule did not address exposures from all shipboard sources such as HF communications, as well as radar. Other categories of transmitters mentioned by EPA as of concern were land-mobile and common carrier communications, land-based radars, and amateur radio. However, no specific data or other evidence was submitted by EPA to support its position with regard to other RF sources.

DISCUSSION AND CONCLUSIONS

22. The comments submitted in this proceeding have been important in helping us determine whether our original proposals for amending Part 80 are supportable. Based on information submitted in this proceeding and further

consideration of our policies in the area of environmental evaluation we have made certain modifications in our original proposal.

23. Although some controversy remains, concern over potential environmental impact from ship earth stations appears to be justified. Most users and manufacturers of these transmitters generally agree with us that the proposed amendments were needed and would satisfy the Commission's NEPA obligations with respect to this category of transmitters. Comments and documentation filed previously in this proceeding also supported the need for some form of evaluation of the RF environment near these stations.

24. Less clear, however, is the need for similar regulation with respect to ship radar. Although there have been comments in the past in this proceeding alleging potentially hazardous exposure from ship radar, no data supporting these contentions has been submitted. Rather, data supporting the opposite view have been submitted by Raytheon, and, in addition, results of a study by the FDA indicated that ship radars have not been shown to cause exposures in excess of safety guidelines.

25. In view of this lack of evidence for potential harm we cannot justify the potentially large administrative burden that would be created by applying the rule amendments to ship radar stations. We also believe that enlarging the scope of these rules to include *all* ship transmitters is, similarly, not supported by the present record. We have not ignored the comments of EPA and others urging us to consider other ship transmitters, including radar, in evaluating the shipboard environment. However, no data or other documentation with respect to potentially harmful exposure from these sources has been submitted. Therefore, at this time we will limit our requirement for environmental evaluation for RF radiation to applications for ship earth stations. If future evidence warrants it, further consideration will be given to applying these rule parts to other ship transmitters.

26. As of the effective date, an applicant for a license or renewal for a ship earth station must evaluate that facility with regard to its potential to cause human exposure to RF radiation in excess of the identified health and safety guidelines. In addition, as of the effective date, manufacturers of this equipment must provide with each unit appropriate installation and operating instructions that will assist the user in preventing RF radiation exposures in excess of the guidelines.

27. We have decided that it would be more consistent with existing Commission policy and rules to specify the requirement for environmental evaluation, originally proposed in Section 80.83, in Section 1.1307(b) of the Commission's Rules. This section of the rules lists previously approved categories of stations to which our RF radiation environmental evaluation requirements apply. Section 80.83, as adopted, will now serve as a cross-reference to Section 1.1307(b). Section 80.227 is being adopted as originally proposed with some minor edits.

28. Under the new rules, each application to the Commission for a ship earth station license or renewal must comply with the requirements of Section 1.1307(b) concerning environmental radiation. It is the responsibility of the applicant to determine whether a station will be in compliance with the RF guidelines specified in the rules. If the facility will not cause RF radiation exposure in excess of the Commission's guidelines, no further action would be required on the part of the applicant. If the facility will likely cause exposure in excess of the guidelines, then an environmental assessment must be filed with the application in accordance with Section 1.1311 of the Commission's rules.[5]

29. The request of AIMS that existing ship stations be "grandfathered" cannot be accommodated. NEPA requires federal agencies to consider environmental impact at the time a federal action, such as approval of an application for a new station or a renewal, is taken. Disregarding potential impact simply because a station is already in existence would not be consistent with the law.[6]

30. We take note of the comments of Raytheon and others that a manufacturer cannot anticipate the type of environment in which a piece of equipment may be placed, and shipboard personnel, not manufacturers, should bear the responsibility for compliance. However, such a concern should not deter a manufacturer from providing basic safety instructions applicable to a particular piece of equipment. Such instructions may have their limitations, but they will help prevent unsafe exposures with respect to a primary radiator. Section 80.227 is intended to assist users in complying with the safety guidelines.

31. Comments expressing the view that small ships should be exempted from compliance with exposure guidelines apparently were directed primarily toward ship radar stations, which we are categorically excluding from consideration. With regard to ship earth stations, these transmitters are normally found on large vessels anyway, and the question of exemptions for small ships should not be relevant. Furthermore, ship earth stations used on small vessels could actually constitute a greater potential exposure problem because of the reduced area available for restricting access. Therefore, an exemption would be unwarranted.

32. We cannot agree with EPA's opinion that the proposed rule amendments are too passive to be effective. The Commission's experience with implementing environmental RF guidelines has resulted in widespread compliance among broadcast and other stations already covered by the rules. We have no reason to believe that ship station compliance with these rule amendments would be any different. EPA has provided no reasons for deviating from this approach. However, if we later find extensive non-compliance, stronger actions could be taken. Evidence of non-compliance could, for example, result in denial of an application or revocation of an existing license.[7]

33. Similarly, we can see no need for the Commission to become involved in regulating the content of manufacturers' instructions to users or regulating licensees' compliance with such instructions and guidelines. Ample guidance to users and manufacturers of RF-emitting equipment with regard to radiation safety is already available through the FCC's OST Bulletin No. 65 [see next paragraph].

34. The Commission believes that the adoption of these amendments to Parts 1 and 80 will be the most practical and reasonable way to both satisfy the Commission's NEPA obligations with respect to ship stations and, at the same time, minimize administrative burden on both applicants and the FCC. Information on compliance with environmental RF radiation guidelines can be found in technical bulletin No. 65, published by the Commission's Office of Engineering and Technology.[8] This bulletin con-

tains information and guidance concerning predicted exposure levels from aperture antennas, ways of controlling exposure, and measurement procedures.

35. With this *Third Report and Order* Docket 79-144 is hereby terminated. The Commission has now completed the establishment of its basic policy with respect to the issue of FCC responsibility to consider hazardous effects of RF radiation. However, due to the likelihood of future developments affecting this topic, both in basic research and with respect to the possible issuance of new health and safety standards, applicants and licensees are put on notice that the Commission may revisit this matter in other proceedings.

FINAL REGULATORY FLEXIBILITY ACT ANALYSIS[9]

I. Need and purpose of this action :

This action is necessary to ensure FCC compliance with the National Environmental Policy Act (NEPA), and, specifically, to minimize the potential for significant environmental impact from radiofrequency (RF) radiation from FCC-regulated facilities. This order applies to RF radiation from ship earth stations only and completes establishment of basic FCC policy in this area.

II. Issues raised by the public in response to the Initial Regulatory Flexibility Act Analysis :

No comments were received addressing the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected :

Because of the Commission's legal obligations under NEPA some way must be established to ensure appropriate environmental evaluation of significant sources of RF radiation under FCC jurisdiction. Therefore, the alternative of not taking any action with respect to environmental evaluation has been rejected. The present course of action is considered to be the most practical and reasonable way to minimize both environmental impact and administrative burden with respect to these facilities. The alternative of also requiring environmental analysis or compliance for ship radar stations and other shipboard transmitters was rejected because the record shows a lack of evidence that such facilities could adversely affect the environment with respect to RF radiation.

PAPERWORK REDUCTION ACT

36. This item has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number for this collection of information requirement is 3060-0388.

ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that, effective **November 17, 1988,** Part 80 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, IS AMENDED as set forth in the Appendix below and that this amendment will be applicable to applications filed on or after this effective date.

38. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

39. This action is taken pursuant to the provisions of Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j) and 303(r), and Section 553 of the Administrative Procedure Act, 5 U.S.C. Section 553.

40. Further information on this item may be obtained by contacting Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653-8169.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

Part 1, Chapter I, of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read:

Authority* : *Secs. 4 (i), 4 (j), and 303 (r) of the Communications Act of 1934, as amended, 47 U. S. C. 154 (i), 154 (j), and 303 (r).

2. In Section 1.1307, the note in paragraph (b) is revised as follows:

§ *1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs)* must be prepared.

* * * * *

(b) * * *

NOTE: Paragraph (b) shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A, G, and L only), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under paragraph (b), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraphs (c) or (d) of this Section.

* * * * *

Part 80, Chapter I, of Title 47 of the Code of Federal Regulations is amended as follows:

Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read:

Authority: Secs. 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

2. Section 80.83 is added as follows:

§ 80.83 Protection from potentially hazardous RF radiation.

Any license or renewal application for a ship earth station that will cause exposure to radiofrequency (RF) radiation in excess of the RF exposure guidelines specified in Section 1.1307(b) of the Commission's Rules must comply with the environmental processing rules set forth in Sections 1.1301-1.1319 of this Chapter.

3. Section 80.227 is added as follows:

§ 80.227 Special requirements for protection from RF radiation.

As part of the information provided with transmitters for ship earth stations, manufacturers of each such unit must include installation and operating instructions to help prevent human exposure to radiofrequency (RF) radiation in excess of the RF exposure guidelines specified in Section 1.1307(b) of the Commission's Rules.

FOOTNOTES

[1] 42 U.S.C. §4321 et seq. (1979).

[2] *See Report and Order*, 50 Fed. Reg. 11151 (1985), 100 F.C.C. 2d 543 (1985) and *Memorandum Opinion and Order*, 50 Fed. Reg. 38653 (1985). Earlier proceedings in this docket were: *Notice of Proposed Rule Making*, 47 Fed. Reg. 8214, 10871, and 27384 (1982), 89 F.C.C. 2d 214 (1982), and *Notice of Inquiry*, 44 Fed. Reg. 37008 (1979), 72 F.C.C. 2d 482 (1979). See also, F.C.C. Gen. Docket 79-163, *Report and Order*, 51 Fed. Reg. 14999 (1986). The FCC's rules implementing NEPA are found in 47 CFR § 1.1301 et seq. Section 1.1307(b) deals specifically with environmental consideration of RF radiation.

[3] *Third Notice of Proposed Rule Making*, 52 Fed. Reg. 18409 (1987), 2 FCC Rcd 2741 (1987).

[4] For the Commission's policy on categorical exclusion from environmental processing see *Further Notice of Proposed Rule Making*, 50 Fed. Reg. 10814 (1985), 100 F.C.C. 2d 568 (1985), and *Second Report and Order*, 52 Fed. Reg. 13240 (1987), 2 FCC Rcd 2064 (1987) and 2 FCC Rcd 2526 (1987).

[5] 47 C.F.R. §1.1311.

[6] *See Report and Order*, 50 Fed. Reg. 11151 (1985), at para. 30.

[7] Section 312, Communications Act of 1934, as amended.

[8] OST Technical Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," available from the Commission or from the National Technical Information Service (NTIS), order number: PB 86-127081, telephone (800) 336-4700.

[9] Pursuant to the provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. §604.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-318

In the Matter of

Amendment of Section 73.202(b), RM-6387
Table of Allotments,
FM Broadcast Stations.
(York, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1988; Released: July 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Grantell Broadcasting Company, licensee of Station WSLY(FM), Channel 257A, York, Alabama, seeking the substitution of Channel 285C2 for Channel 257A and modification of its license accordingly.

2. Petitioner asserts that its proposal can be accommodated in conjunction with the proposed deletion of Channel 285A at Jackson, Alabama, licensed to Station WHOD(FM),[1] in MM Docket No. 87-216.

3. We believe the proposal warrants consideration since it could provide a wider coverage area FM station to serve the public interest. A staff engineering analysis reveals that if Station WHOD(FM) is modified, as described above, the proposed allotment of Channel 285C2 can be made at York, Alabama, in conformity with the minimum spacing requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is restricted to an area at least 26.2 kilometers (16.3 miles) south[2] to avoid short-spacing to Station WZZK(FM), Channel 284C, Birmingham, Alabama and Station WBKJ(FM), Channel 286C1, Kosciusko, Mississippi.

4. In view of the above, we shall propose the substitution of Channel 285C2 for Channel 257A at York, Alabama, as requested. Additionally, we shall propose to modify the Class A license of Station WSLY(FM) in the event Channel 285C2 is substituted for Channel 257A at York. However, in conformity with Commission precedent, should another interest in the York proposal be expressed, the modification could not be made unless at least one additional equivalent channel is available to accommodate other expressions of interest. *See* Section 1.420(g) of the Commission's Rules.

5. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for costs incurred therewith. Therefore, if Channel 285C2 is ultimately allotted to York, or any other channel to another community as a result of any successful counterproposal which would likewise require Station WHOD(FM), Jackson, Alabama, to move from Channel 285A, then the successful permittee will be required to equally share in the reimbursement costs with Station WKKY(FM), Moss Point. *See Naguabo, Puerto Rico*, 51 FR 30363, published August 26, 1986. Moreover, if the Moss Point, Mississippi proceeding is concluded prior to resolution of the instant proceeding, the successful permittee in that proceeding may seek reimbursement of shared costs from the prevailing party herein, as discussed above.

6. The petitioner has failed to make a reimbursement commitment in its proposal, and should do so in comments to be filed in response to this *Notice*. This requirement is also expected of any other interested party at York, or any counterproponent whose proposal would likewise require the Jackson, Alabama, substitution. Failure to provide such commitment could result in a denial of the proposal.

7. Since the instant proposal could provide a first wide coverage area broadcast service to York, Alabama, the Commission considers it appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
York, Alabama	257A	285C2

8. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this Order by regular mail to the following:

Jackson County Broadcasting Co., Inc.
Radio Station WKKY(FM)
Box 1789
Pascagoula, MS 39567

Vogel Ellington Corporation
Radio Station WHOD(FM)
P.O. Box 518
Jackson, AL 36545

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **August 29, 1988,** and reply comments on or before **September 13, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

William B. Grant
Grantell Broadcasting Company
Route 1, Box 400B
York, AL 36925

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the*

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding. members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.(

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that. they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] In that proceeding, Station WHOD(FM) has been ordered to show cause why its license should not be modified to specify operation on Channel 233A in lieu of Channel 285A to accommodate a rule making proposal (RM-6073) filed by Jackson County Broadcasters, Inc., licensee of Station WKKY(FM), Channel 285A, Moss Point, Mississippi, to modify its facilities to specify operation on Channel 285C2.

[2] Reference coordinates for Channel 285C2 at York are 32-24-04 and 88-06-41.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WOR) New York, New York	**MM DOCKET NO. 84-1122** File No. BR-177

For Renewal of License

MAGNA MEDIA CORPORATION New York, New York	**MM DOCKET NO. 84-1123** File No. BP-830427AB
FREEDOM BROADCASTING CORPORATION New York, New York	**MM DOCKET NO. 84-1124** File No. BP-830511AF
SOUTH JERSEY RADIO, INC. Yonkers, New York	**MM DOCKET NO. 84-1126** File No. BP-830511AL
WOMEN OWNING RADIO, INC. New York, New York	**MM DOCKET NO. 84-1128** File No. BP-830512AJ
S/G COMMUNICATIONS New York, New York	**MM DOCKET NO. 84-1132** File No. BP-830512BT
COZZIN COMMUNICATIONS CORPORATION Scarsdale, New York	**MM DOCKET NO. 84-1133** File No. BP-830512BO

For Construction Permit

RKO GENERAL, INC. (WRKS-FM) New York, New York	**MM DOCKET NO. 84-1134** File No. BRH-14

For Renewal of License

MAGNA MEDIA CORPORATION New York, New York	**MM DOCKET NO. 84-1135** File BPH-830427AB
SOUTH JERSEY RADIO, INC. New York, New York	**MM DOCKET NO. 84-1138** File No. BPH-830512AH
S/G COMMUNICATIONS New York, New York	**MM DOCKET NO. 84-1139** File No. BPH-830512AN
COZZIN COMMUNICATIONS CORPORATION New York, New York	**MM DOCKET NO. 84-1140** File No. BPH-830512BB
PEOPLE BROADCASTING CORPORATION New York, New York	**MM DOCKET NO. 84-1146** File No. BPH-830512BY

For Construction Permit

Appearances

William J. Kolasky, Jr., Daniel G. Jarcho, and Harold David Cohen on behalf of RKO General, Inc.; *Morton L. Berfield* and *Roy W. Boyce* on behalf of Magna Media Corporation; *Eugene F. Mullin, Lawrence Roberts* and *Rachel D. Cramer* on behalf of Freedom and People Broadcasting Corporations; *Alfred C. Cordon, Dennis J. Kelly*, and *Marie Riordan Kaplan* on behalf of South Jersey Radio, Inc.; *Gene A. Bechtel* and *Ann C. Farhat* on behalf of Women Owning Radio, Inc.; *Joel H. Levy* and *Richard A. Helmick* on behalf of S/G Communications; *Ben C. Fisher* and *Janet M. Evans* on behalf of Cozzin Communications Corporation; and *Linda Figueroa Bocchi* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

PARTIAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD LUTON

Issued: June 21, 1988; Released: July 15, 1988

I. PRELIMINARY STATEMENT

1. The Commission has under consideration the license renewal applications of RKO for stations WOR and WRKS-FM in New York City, New York, six mutually exclusive applications to operate on the same channel as WOR with identical facilities, and five mutually exclusive applications to operate on the same channel as WRKS-FM with identical facilities. One of the applicants, South Jersey Radio, Inc., proposes Yonkers, New York, as its city of license for WOR. Another applicant, Cozzin Communications Corporation, proposes Scarsdale, New York, as its city of license for WOR.

2. By *Order* released December 11, 1984, FCC 84-452, the captioned applications, with the exception of RKO's renewal applications, were designated for hearing in a consolidated proceeding along with 13 others that have since been dismissed. Prehearing conferences were held on February 11 and April 19, 1985. Hearing sessions were held on October 15-24 and December 11, 1985. The record was closed by *Orders* released March 3 and 28, 1986. FCC 86M-806; FCC 86M-1087. Proposed findings of fact were submitted by the parties on May 8, 1986, and reply proposed findings were submitted on July 8, 1986.[12]

3. The hearing proceeded on the standard comparative issue, and on the Section 307(b) issues raised by the Yonkers and Scarsdale applicants. Two additional issues especially designated against Cozzin Communications Corporation have been added to this proceeding, but have

been tried in a related proceeding, RKO General (WRKO), MM Docket No. 84-227. The resolution of those issues in WRKO will be treated as *res judicata* in this proceeding. *Order*, FCC 85M-2350, released June 5, 1985. The issues so designated are:

> (l) To determine whether Joseph Zingale misrepresented the facts to or lacked candor with the Commission when he executed the signatures of his wife and children on 46 LPTV applications filed with the Commission, and if so, what effect those misrepresentations have on Zingale's basic or comparative qualifications to be a Commission licensee;
>
> (2) To determine whether Joseph Zingale is the real party-in-interest in those 46 LPTV applications, and misrepresented his ownership status for the purpose of circumventing 47 C.F.R. 73.3513, 75.3518, 73.3520, and 73.3521 thereby abusing the Commission's processes, and if so, what effect that abuse has on Zingale's basic or comparative qualifications to be a Commission licensee.

4. This proceeding is being conducted pursuant to procedures set forth in RKO (WFYR), 100 FCC 2d 462 (1985). In this phase of the proceeding, the standard comparative issue and basic qualifying issues are being resolved among the competing applicants. RKO's basic and comparative qualifications will be resolved at a later time.

II. FINDINGS OF FACT

Magna Media Corporation

5. Magna Media Corporation is a New York corporation whose nine stockholders are as follows:

Name	Percentage Of Stock Ownership	Director	Corporate Office
James H. Dowdy	39.7%	Yes	President
Barbara J. Norris	6.7%	Yes	Vice President
Mario L. Baeza	13.4%	Yes	Secretary/ Treasurer
Marilyn L. Bell	6.7%	Yes	None
Robert L. Dunham	6.7%	Yes	None
George R. Spriggs	6.7%	Yes	None
M. Steven C. Williams	6.7%	Yes	None
Aaron O. Wells	6.7%	Yes	None
John H. Ward, Jr.	6.7%	Yes	None

(Magna Media Exs. 1-10).

6. James H. Dowdy, Barbara J. Norris, Mario L. Baeza, Marilyn L. Bell, George R. Spriggs, M. Steven C. Williams, and John H. Ward will devote 40 hours each per week to their respective positions. Dr. Aaron O. Wells and Robert L. Dunham will devote 25 hours each week to their respective positions (Magna Media Ex. 1).

7. The applicant proposes to utilize an auxiliary power generator to ensure continuous operation.

8. James H. Dowdy is president, a director, and a 39.7% stockholder in Magna Media. Except for the period from 1972 to 1982, Dowdy's primary residence throughout his life has been in New York City. He is a black American, and he has no ownership interest in an any medium of mass communications (Magna Media Ex. 10).

9. Since 1970, Dowdy has been employed as president of Harlem Commonwealth Council, Inc., an organization devoted to the economic development of Harlem. In 1970, he was also appointed president of the Commonwealth Holding Company, Inc.

10. As the president of the Harlem Commonwealth Council, Dowdy's responsibilities include providing direction for all administrative operations and formulating and implementing policies. He establishes working relationships with community organizations whose association with the Harlem Commonwealth Council is mutually beneficial.

11. As the chief executive officer of the Commonwealth Holding Company, Dowdy formulates business and development programs and strategies. He provides leadership and guidance to assure that corporate goals are met. He creates a framework for the development of capital and operating expenditure budgets for the Harlem Commonwealth Council and the Commonwealth Holding Company and its subsidiaries and acts as the principal liaison for securing private and public financing from an array of institutions.

12. Past and present civic and business activities which Dowdy has maintained include:

1980 to Present	Member of the Board of Directors of the New York City Partnership
1972 to Present	Member of the Executive Committee of the Board of Directors of Harlem Interfaith Counseling Services
1979 to Present	Member of One Hundred Black Men
1979 to Present	On Board of Trustees of the Cathedral Church of St. John the Divine
1975-85	Board Member of Freedom National Bank
1985	Vice Chairman of Freedom National Bank
1982 to Present	Member of the Harlem Business Alliance
1982 to Present	Member of Board of Trade, Washington, D.C.
1979 to Present	Member of New York Citizens for Balanced Transportation
1973-78	Founder of the National Congress for Economic Development
1972-74	Member and Chairman of the Executive Board of the New York Better Business Bureau of

	Harlem
1981-84	Chairman of the Board of Directors of The Boys' Choir of Harlem
1978-79	Appointed by President Carter to implement several economic development projects for the South Bronx
1985 to Present	Elected Chairman of 125th Street Local Development Corporation

(Magna Media Ex. 10, p. 3)

13. In the event that one or both of Magna Media's applications are granted, Dowdy will resign from his current positions with the Harlem Commonwealth Council and the Commonwealth Holding Company in order to devote 40 hours each week to his position as the general manager of the station. He will be responsible for supervising the overall operation of the stations. These responsibilities will include establishing and implementing policy and hiring, firing and supervising personnel.

14. Dowdy will be a member of the Program Board. The Program Board will meet weekly to assess the stations' programming and to determine its continuing responsiveness to community needs.

15. Barbara J. Norris is vice president, a director and a 6.7% stockholder in Magna Media. She has lived in New York City for the past 29 years. Norris is a black female with no ownership interest in any medium of mass communications (Magna Media Ex. 7).

16. Norris graduated from Seward Park High School in New York City. She attended Hunter College in New York City where she received a B.A. degree in Economics and a M.A. degree in Urban Planning. Since 1971, Norris has been employed by Harlem Commonwealth Council, Inc., and Commonwealth Holding Company, Inc. She is executive vice president of Harlem Commonwealth Council and vice president of the Commonwealth Holding Company. In her position at the Harlem Commonwealth Council, she assists in the establishment of operating procedures and she directs and supervises all staff in conjunction with the president. Additionally, she oversees the development and presentation of long-range planning in all areas of operation. Norris supervises all research and design aspects of physical development and redevelopment projects. She reports directly to the president of the corporation.

17. In 1971 and 1972, Norris served as assistant vice president of the Harlem Commonwealth Council. In that position, she provided support to the president and acted as liaison with banks and other financial institutions, businesses, community and government organizations.

18. From 1969 to 1971, Norris was employed at Harlem-East Harlem Model Cities in various positions. From August 1968 to April 1971, she was Deputy Director of Program Operations. In that position, she coordinated and supervised program development and implementation in several divisions. From September 1967 to August 1969, Norris was a program manager at Community Development Agency.

19. Since 1979, Norris has been on the advisory committee of Manhattan Valley Youth Outreach Program at Cathedral Church of St. John the Divine. Since 1985, she has been an advisor to Community Board 9 in Manhattan. Community Board 9 is a community planning organization which makes determinations regarding the acceptability of residential, commercial and industrial development. Since 1976, she has been active in Pyramid Tennis Association, Inc.--Junior Development Program. She was a founder of this organization and has also served on the board of directors as a fundraiser. In 1983 and 1984, Norris was a member of the African Heritage Studies Association and the New York City Black Convention Continuation Committee in 1982 and 1983. She is an advisor to Project Double Discovery, a college preparatory program at Columbia University.

20. In the event that one or both of Magna Media's applications are granted, Norris will resign from her current positions at the Harlem Commonwealth Council and the Commonwealth Holding Company in order to devote 40 hours each week to her position as operations manager at the radio stations. She would administer Magna Media's EEO Program and its internship program.

21. Norris will serve as chairperson of Magna Media's Program Board.

22. Mario Baeza is secretary/treasurer, a director and a 13.4% stockholder in Magna Media. He presently resides in Englewood, New Jersey, within the service area of WOR-AM and WRKS-FM. Baeza has lived in the New York City area for the past 30 years. He is a black Hispanic male with no ownership interest in any medium of mass communications (Magna Media Ex. 9).

23. Baeza attended Cornell University in Ithaca, New York, where he graduated in 1971 with a B.A. degree. In 1974, Baeza graduated from the Harvard Law School with a J.D. degree. He is currently a partner in the law firm of Debevoise & Plimpton, New York, New York. As a partner in the firm, Baeza has successfully developed his own practice, which includes representing major investment banking firms, several large corporate and international clients and a number of corporate clients and individuals involved in the telecommunications field.

24. In March 1983, Baeza was appointed to the faculty of the Harvard Law School as a Lecturer in Law. Since September 1983, he has taught a course at Harvard Law School entitled "New Technology and the Law." This course deals with current and potential legal issues arising out of the proliferation of new technology in this country.

25. In June 1984, Baeza was elected to the Board of Editors of the *Computer Law Strategist*. In February 1985, Baeza was elected to the *Rutgers Computer & Technology Law Journal* Board of National Advisors. On September 23, 1984, pursuant to Executive Order No. 56, Baeza was appointed by Governor Mario M. Cuomo to a newly formed commission entitled "The New York State Task Force on Life and the Law."

26. In March 1984, Baeza was elected to the Board of Directors of the NAACP Legal Defense Fund (LDF). He was elected to the board following 3 years of serving as Co-Chairman of the Annual Civil Rights Institute, a program sponsored by LDF and designed to bring together in a public forum people who are concerned about the progress of civil rights in America, and especially to examine contemporary issues of racial discrimination.

27. In February 1982, Baeza was elected to membership in the Council on Foreign Relations, Inc., a forum where renowned leaders from the arenas of scholarship, government and private sector come together to discuss and study issues in international affairs. In January 1985, Baeza was invited to become a member of the Council on

United States and Italy, an organization that has sought to bring together outstanding individuals in a wide variety of fields. In May 1985, Baeza was invited by Dean Alain Seznec to join the Advisory Council of the College of Arts and Sciences of Cornell University for a 3-year term.

28. From December 1974 to 1981, Baeza was an Associate and Senior Associate at Debevoise & Plimpton. From August to November 1974, Baeza was employed by the Rand Corporation as an economic consultant. In this position, he co-authored an economic report commissioned by the National Aeronautics and Space Administration (NASA) regarding the ability of NASA to charge private industry users for spin-offs of NASA's research and development activities.

29. From 1969 to 1972, Baeza served on the Board of Trustees of the National Urban League of New York. In 1969 and 1970, at the age of 18, Baeza was appointed to serve on a special committee of five which advised former Secretary of HEW, Robert Finch, on methods of allocating federal funds among Negro colleges and national universities that adopted polices encouraging minority enrollment.

30. Baeza maintains memberships in the following associations: American Bar Association, Committee on Developments in Business Financing, Subcommittee on High Technologies Ventures; Bar Association of the City of New York; Cornell Alumni Steering Committee; Federal Communications Bar Association; United States Council for International Business; the Board of Directors of the Boys' Choir of Harlem, and the Harvard Club.

31. In the event that one or both of Magna Media's applications are granted, Baeza will limit his activities to the extent necessary to devote 40 hours each week to his position as co-director of public affairs and community relations. M. Steven Williams and Baeza will be jointly responsible for overall supervision of public affairs and other programming responsive to community needs, excluding news and entertainment. Williams and Baeza will also be involved in supervising the ascertainment of community needs and liaison with the community. Baeza will also be a member of the Program Board.

32. Mr. Baeza testified that he would have primary responsibility for public affairs programming and Mr. Williams would have primary responsibility for community relations (Tr. 256). He also testified, however, that both he and Mr. Williams would have responsiblity for community relations (Tr. 236-37). He admitted that the line between his responsibilities and those of Mr. Williams is not clear, and that the line between public affairs and community relations is not clear (Tr. 256).

33. Mr. Baeza proposes to work at the stations 5:00 p.m. to 10:00 p.m. on Mondays and Tuesdays, 6:00 p.m. to 11:00 p.m. on Wednesdays and Thursdays, noon to 6:00 p.m. on Fridays and 10:00 a.m. to 6:00 p.m. Saturdays and Sundays--a schedule that totals 40 hours per week (Tr. 241-243)). In the past, Mr. Baeza has worked past 6:00 p.m. at Debevoise & Plimpton on numerous occasions (Tr. 261). Program board meetings would be set in the noon-to-6:00 p.m. time period on Fridays so that Mr. Baeza could attend (Tr. 242).

34. Mr. Baeza does not intend to reduce his activities at Debevoise & Plimpton if Magna Media is a successful applicant. A chart showing Mr. Baeza's billable and non-billable hours for the period January 2, 1984, to June 30, 1985, was introduced at the hearing (RKO Ex. 6). Mr. Baeza testified that the document accurately reflected the number of hours he devoted to the listed activities, to the best of his knowledge (Tr. 235). Category 9 among the enumerated non-billable activities consisted entirely of Debevoise & Plimpton activities (Tr. 236). The hours shown were as follows:

1984	Billable	Cat. 9	Tot. D&P	Categ. 18	Subtotal	Other Non-Billable	Total
January	139.1	13	152.1	34	186.1	44	230.1
February	179.2	3	182.2	18	200.2	47	247.2
March	102.4	5	107.4	21	128.4	45	173.4
April	202.2	2	204.2	38	242.2	83	325.2
May	202.9	6	208.9	45	253.9	35	288.9
June	189.0	21	210.0	37	247.0	108	355.0
July	154.9	7	161.9	32	193.0	52	245.9
August	266.0	2	228.0	38	266.0	113	379.0
September	201.3	10	211.3	42	253.3	151	404.3
October	211.2	20	231.2	45	276.2	139	415.2
November	201.6	19	220.6	38	258.6	127	385.6
December	192.1	4	196.1	57	253.1	81	334.1
Total	2201.9	112	2313.-9	445	2758.0	1025	3783.9
Avg. Mo.	183.5	9	192.8	37	229.9	85	315.3
Avg. Wk.	42.3	2	44.5	9	53.1	20	72.8
1985							
January	240.1	8	248.1	30	278.1	89	367.1
February	159.9	3	162.9	28	190.9	30	220.9
March	215.1	6	221.1	35	256.1	42	298.1
April	186.3	15	201.3	29	230.3	57	287.3
May	202.6	10	212.6	54	266.6	40	306.6
June	167.7	4	171.7	41	212.7	19	231.7
Total	1171.7	46	1217.7	217	1434.7	277	1711.1
Avg. Mo.	195.3	8	210.0	36	239.1	46	285.3
Avg. Wk.	45.1	2	46.8	8	55.2	11	65.8

(RKO Ex. 6 [calculations added]).

35. Marilyn L. Bell is a 6.7% percent stockholder and a director of Magna Media. She currently resides in New York City and has lived there for the past 42 years. Bell is a Black female with no ownership interest in any medium of mass communications (Magna Media Ex. 8).

36. Bell attended the Bronx High School of Science where she received a Special Academic Diploma in 1960. From 1960 to 1963, she attended the Uptown Division of City College. From 1963 to 1966, she attended the Baruch School of Business and Public Administration.

37. Bell is currently employed as Secretary-Treasurer and Comptroller at the Harlem Commonwealth Council, Inc., in New York City. In 1970, she was appointed by the Board of Directors of the Council to serve as Secretary-Treasurer to all Commonwealth Holding Company affiliates. Since 1968, Bell has been employed as a comptroller of the Harlem Commonwealth Council.

38. In 1968, Bell was employed as an auditor by Lucas, Tucker and Co., a public accounting firm. As a field auditor, she audited various company books, prepared workpapers and audit statements after verifying financial records and established accounting systems for new companies. Bell was promoted to Supervising Auditor in charge of field auditors for 78 agencies.

39. From 1964 to 1967, Bell was employed as an accountant at Brooklyn College Business Enterprises. Since May 1985, Bell has been on the Board of Directors of the Freedom National Bank.

40. Since 1979, Bell has been a member of the Coalition of 100 Black Women, New York Chapter. Since 1979, she has been a member of the National Council of Negro Women, New York Chapter. Since approximately 1978, she has been the Accountant for Pyramid Tennis Association in New York City. Since approximately 1980, she has been the accountant for the Dowdy Family Foundation. Since 1982, she has been a member of the A. Philip Randolph P.T.A.

41. In the event that one or both of Magna Media Corporation's applications are granted, Bell will resign from her current positions at the Harlem Commonwealth Council in order to devote a minimum of 40 hours each week to her position as Comptroller of Magna Media's radio stations. Her duties as Comptroller will include responsibility for taxes, preparing budgets and financial projections, analyzing the financial implications of the activities and proposals of other departments, establishing bookkeeping procedures, supervising billing, collections and accounts payable, and developing procedures to ensure cost effective operations.

42. Bell will be a member of the Program Board.

43. Robert Lee Dunham is a Director and a 6.7% stockholder in Magna Media. He resides in New York City, and has lived there for the past 38 years. He is a black male, and he has no ownership interest in any medium of mass communications.

44. Dunham graduated from Central Evening High School in Brooklyn, New York. He currently owns and operates seven McDonald's restaurants in the New York/New Jersey area. He has been a McDonald's owner/operator since 1972.

45. From 1969 to 1972, Dunham was employed as a Rank patrolman for the New York City Police Department. He served with the management division and the motorcycle division (Magna Media Ex. 3).

46. Past and present memberships which Dunham has maintained include:

1974-1975	Worked with Ed Schmidt, Chief Administrative Officer and Vice President, Board of Directors, McDonald's, in developing the Minority Market
1974 to Present	Member of Board of Directors, McDonald's, New York Region.
1976-77	Special Events Chairman, McDonald's, New York Region
1976	Member, McDonald's National Operators Advisory Board
1975-76	Chairman of McDonald's Franchise Relations Committee
1982	Secretary of the Board of Directors, McDonald's New York Region
1979	Vice-President, McDonald's Co-op, New York Region
1979-81	Chairman of Security Committee, McDonald's, New York Region
1979-80	Chairman of Marketing Committee, McDonald's, New York Region
1977	Board Member, Washburn Wire Company
1977	Chairman, Project Investment Committee, Harlem Commonwealth Council
1980	Member of Board of Directors, Harlem Business Alliance
1983	Member, Board of Directors, Harlem Urban Development Corporation
1983	Member of the New York City Urban Coalition
1979	Member, New York City Partnership, Inc.
1980	Member, New York City Partnership Youth Task Force
1983	Member, Public Affairs Committee, Black McDonald's Operators Association
1982-84	Elected President of National Black McDonald's Operators Association
1984	Member, McDonald's Public Relations Committee, New York Region
1984	Member, Board of Directors, St. Mary's Hospital
1984	Member, Board of Directors, New York City Youth
1982	Member, Public Affairs Committee, Black McDonald's Black Operators Association
1983	Member, Commonwealth Holding Co., Inc., Board of Directors, and Business Review Committee

(Magna Media Ex. 3, p. 1).

47. In the event that one or both of Magna Media's applications are granted, Dunham will limit his current activities to the extent necessary to enable him to devote 25 hours each week to his position as Assistant Director of Public Affairs and Community Relations. He will administer the stations' Public Service Announcement program and will be responsible for supervising the development

and implementation of programming providing information and guidance to minorities relating to business and financial matters.

48. Dunham will be a member of the Program Board.

49. George R. Spriggs is a Director and 6.7% stockholder of Magna Media. He lives in New York City, and has lived there for the past 21 years. Spriggs is a black male, and he has no ownership interest in any medium of mass communications (Magna Media Ex. 2).

50. Spriggs is currently employed at the Commonwealth Holding Company, Inc., as Vice President of the Technical Services Division. He has served in this position since 1979.

51. Since 1976, Spriggs has been a Vice President of Business Development of Harlem Commonwealth Council. From July 1978 to March 1979, he was Vice President of Corporate Management Systems and Procedures at the Commonwealth Holding Company. From January 1975 to January 1976, Spriggs was the Director of Business Management at the Harlem Commonwealth Council.

52. From September 1973 to January 1975, Spriggs was Director of Harlem Commonwealth's Technical Assistance Center, Inc. He was in charge of administrative operations as well as long-range policy formulation and implementation. He was responsible for screening all technical assistance projects.

53. From July 1972 to August 1973, Spriggs was a Management and Development Consultant at Trans Urban East, Inc. from February 1972 to August 1973, he was a Fiscal Consultant for the Council for Airport Opportunity, Inc. From 1970 to June 1972, he was Economic Development Coordinator of Columbia University's Faculty - Student Technical Assistance Program.

54. In 1970, Spriggs was employed part-time as an Accountant-Auditor at Lucas-Tucker and Company. In 1969 and 1970, he was a Consultant and Administrative Officer at IS 201 Community Education Center. In 1968 and 1969, Spriggs was Director of Fiscal Affairs at the Human Resources Administration. From August 1963 to October 1968, he was Budget Director for New York City's Community Development Agency.

55. Since approximately 1971, Spriggs has assisted West Harlem Community Organization on a *pro bono* basis. Recently, he has assisted that organization in identifying an appropriate computer system which would enable it to convert from a manual to a computerized property management system.

56. In the event that one or both of Magna Media's applications are granted, Spriggs will resign from his current position in order to devote forty (40) hours each week to his position as Business Manager of Magna Media. He will be responsible for the business activities of Magna Media. All Sales Managers will report to him, and he will be responsible for supervision of their activities. He will be responsible for supervising the stations' promotions and the stations' advertising.

57. Spriggs will also be a member of the Program Board.

58. M. Steven C. Williams is a director and a 6/7% stockholder in Magna Media. He lives in New York City, and has lived there all of his life except in 1971-1975 and 1977-1980. Williams is a black male, and he has no ownership interest in any medium of mass communications.

59. Williams graduated from Trinity College with a B.S. degree in physiology. He is currently employed as an Account Executive at Sulzberger-Rolfe, Inc., in New York, a position he has held since 1984 (Magna Media Ex. 6).

60. From 1980 to 1984, Williams was Executive Director of the Council for Airport Opportunity. From 1977 to 1980, he was employed at Boone Young & Associates, Inc., as Director of Outreach of the North East Corridor Improvement Project. From 1975 to 1977, Williams was a Benefit Plan Counselor for the Teachers Insurance and Annuity Association. He represented the organization in Colorado, New Mexico, and New York to college and university financial officers and to professional associations.

61. In 1980 and 1982, Williams was Chairman of the Development Committee for Black Tuesday, a political group dedicated to social change via the political process. In 1980, he was a member of the New York State George Bush for President Finance Committee. In 1982, he was a Republican candidate for the New York Senate.

62. In the event that one or both of Magna Media's applications are granted, Williams will resign from his current position in order to devote 40 each week to his position as Co-Director of Public Affairs and Community Relations. Mario L. Baeza and Williams will be jointly responsible for the overall supervision of public affairs and other programming responsive to community needs, excluding news and entertainment. Baeza and Williams will be involved in supervising the ascertainment of community needs and liaison with the community (Magna Media Ex. 9).

63. Williams will be a member of the Program Board.

64. Aaron O. Wells is a Director and a 6.7% stockholder in Magna Media. He lives in New York City, and has lived there for the past 38 years. Wells is a black male, and he has no ownership interest in any medium of mass communications (Magna Media Ex. 5).

65. Wells graduated from William Penn High School in High Point, North Carolina. He received a Bachelor of Science degree from Virginia Union University and a degree in medicine from Howard University School of Medicine. He has practiced medicine in New York City since 1961.

66. From 1951 to 1958, Wells was an Attending Physician in the Department of Medicine at Harlem Hospital. From 1951 to the present, Wells has been a Clinical Associate Professor of Medicine at Cornell University, School of Medicine in New York City. From 1951 until the present, Wells has been an Associate Attending Physician at New York Hospital. He is currently Director of the Adult Methadone Treatment Program at New York Hospital.

67. Wells has been a fellow of the American College of Physicians since 1956. He has been a member of the American Medical Association since 1951, a member of the National Medical Association and a member of the New York County Medical Society since 1951. He was certified by the American Board of Internal Medicine in 1956. He was on the Board of Trustees of the New York Academy of Medicine from 1978 to 1981. He has been Imperial Medical Director of the Ancient Egyptian Arabic Order, Nobles Mystic Shrine, Division of Credentials and Grants, since 1972. He has been a Member of the Internship Advisory Committee at New York Hospital since 1976. He was a Committee Member of the Health Services

Agencies of New York County Medical Society from 1978 to 1980. Wells has been Chairman of Empire State Political Action Committee of Black Physicians since 1970. He has been a Member of the Professional Education Committee of the Harlem Unit - American Cancer Society since 1982.

68. In 1964, Wells was the first chairman of the Medical Committee for Human Rights, an organization founded to render aid to civil rights workers in the South. Since 1978, he has been active in the NAACP, and the Urban League. From 1956 to 1960, he was a member of the Alfred Issacs Democratic Club. From 1964 to 1966, he was a member of the Haryou Act, and since 1949, he has been a member of the Abyssinian Baptist Church. In 1972, Wells became a member of the Prince Hall Masons.

69. In the event that one or both of Magna Media's applications are granted, Wells will limit his current activities to the extent necessary to devote 25 hours each week to his position as Assistant Director of Public Affairs and Community Relations. He will be responsible for supervising the development and implementation of programming relating to the health needs of the population within the stations' service area.

70. Wells will be a member of Magna Media's Program

71. John H. Ward is a Director and a 6.7% stockholder of Magna Media. He lives in New York City, and has lived in the New York City area for the past 40 years except for 1971-1977 (Tr. p. 41). Mr. Ward is a black male, and he has no ownership interest in any medium of mass communications (Magna Media Ex. 4).

72. Ward attended Jamaica High School in Jamaica, New York, where he graduated in 1954. In 1977, Ward received a B.S. degree in Behavior Science from the New York Institute of Technology. Ward is currently employed at the New York City Human Resources Administration/Department of Social Services. He is the Deputy Director of Police Operations at the Office of Security. He has been employed in this position since 1982.

73. From June 1979 to May 1982, Ward was employed by the Office of Inspector General as a confidential investigator. He was responsible for coordinating security between the Office of Inspector General, the Department of Employment and community based organizations. From March 1978 to May 1979, he was employed by Howard Security, Inc., as the Executive Vice President and Director of Personnel/Security Operations.

74. From January 1977 to March 1978, Ward was an Area Manager of Security Operations at Howard Security, Inc. He supervised all uniformed guards, formulated daily and weekly work schedules, trained new employees and handled assignments for new clients. From 1960 to 1977, Ward was a police officer at the New York City Police Department. From 1958 to 1960, he was in the United States Army; he received an honorable discharge in 1960.

75. In the event that one or both of Magna Media's applications are granted, Ward will resign from his current position in order to devote 40 hours each week to his position as Assistant Director of Public Affairs and Community Relations. He will be responsible for supervising the implementation of all non-entertainment programming (other than news) in the area of public safety as it relates to the minority population with Magna Media's service area (Magna Media Tr. 103-104).

76. Mr. Ward will be a member of Magna Media's Program Board.

77. A subscription agreement, dated as of March 30, 1983, was signed by all of the Magna Media shareholders except Mr. Ward, and by Malcolm L. Corrin, who agreed to purchase 67 shares (6.7% of the shares subscribed for) (RKO Ex. 4). At some point, Mr. Corrin dropped out, and was eventually replaced by Mr. Ward (Tr. 77, 287).

78. Mr. Ward did not learn about the Magna Media group until the summer of 1983 (Tr. 59). In the summer of 1983, he learned about the group in a conversation with Mr. Dunham, but he did not join Magna Media in 1983. Although Mr. Ward wrote a check for750 to Mr. Dunham on July 12, 1983, he was not a shareholder in Magna Media at the time, and he did not make a capital contribution to Magna Media in 1983 (RKO Ex. 5). Mr. Ward considered himself shareholder in Magna Media as of March 1984, because at that time, an amendment to the application was filed listing him as a shareholder (Tr. 75, 77).

79. In accordance with an order of the Presiding Judge, FCC 87M-818 (released February 21, 1985), Magna Media filed its integration statement on March 4, 1985, listing Mr. Ward as an integrated shareholder. Mr. Ward's share certificate was not issued until August 1, 1985 (Tr. 59). Mr. Ward did not at any time sign subscription agreement (Tr. 59-60, 74). He testified at hearing that he orally agreed to be bound by the same subscription agreement that the other shareholders had signed (RKO Ex. 4; Tr. 74-75, 79, 92). At a deposition in August 1985, however, he was shown the subscription agreement, testified that he recognized it, testified that is was forwarded to him through the mail, and testified that he did not recall ever agreeing in writing or orally to be bound by the agreement (Tr. 81-82). At hearing, Mr. Ward admitted that he recognized the document at his deposition and testified at his deposition that he had never orally agreed to be bound by it (Tr. 84, 92). He testified at hearing, however, that his deposition testimony was incorrect because he was unfamiliar at the time of the deposition with the agreement that he was bound by (Tr. 82, 92-93).

80. Magna Media claims 86.6% full-time integration credit for seven of its nine shareholders and 13.4% part-time integration credit for the remaining two shareholders (Magna Media Ex. 1).

81. James H. Dowdy is an officer and director, but not a stockholder of East Coast Development Corporation. On August 22, 1985, East Coast Development Corporation acquired 25,000 shares of Class B stock of Essence Communications, Inc., which is the publisher of Essence Magazine. Dowdy claims that he intends to sever all connection with East Coast Development Corporation in the event one or both of Magna Media's applications are granted (Amendments filed September 24, 1985).

82. Della B. Baeza, the wife of Magna Media principal Mario Baeza, was employed by American Broadcasting Company (ABC) as an attorney in the ABC legal department from July 20, 1981, until at least September 26, 1985. On September 26, 1985, Magna Media represented to the Commission that Mrs. Baeza would resign from her position at ABC if one or both of Magna Media's applications were granted (Amendments filed September 26, 1985).

Freedom Broadcasting Corporation and People Broadcasting Corporation

83. Freedom Broadcasting Corporation and People Broadcasting Corporation are New York corporations incorporated in April 1983 (Freedom and People Ex. A). Freedom has applied for the AM license, and People has applied for the FM license in this proceeding.

84. Freedom and People each represent the following division of ownership for their stock:

Ponchitta Pierce	7%
Rachel Robinson	3%
Republic Broadcasting Corporation	90%

Price Communications Corporation owns 100% of the stock of Republic Broadcasting Corporation (Republic).

85. The shareholders holding more than 5% of the currently outstanding voting common stock of Price Communications are Robert Price, Citicorp Venture Capital, Ltd. (CVCL), and Lincoln National Corp. (Freedom and People Ex. A; Tr. 469-70). Robert Price owns between 8 and 9% percent of the currently outstanding stock of Price Communications. On a fully diluted basis, Mr. Price owns between 10 and 11% of the stock of Price Communications. CVCL owns slightly more than 25% of the voting common stock of Price Communications on a fully diluted basis; excluding convertible preferred shares, CVCL owns 15 or 16% of the currently outstanding common stock of Price Communications. Lincoln National Corp. owns slightly less than 10% of the current outstanding common stock of Price Communications. The officers of both Freedom and People are: Robert Price (President and Treasurer); Ponchitta Pierce (Vice President); Steven Price (Vice President); and Ellen S. Fader (Vice President and Secretary). The directors of both Freedom and People are Ponchitta Pierce, Robert Price and Steven Price.

86. Mr. Price claims to have authority, as president of Republic, to vote 510 of Republic's shares in both Freedom and People (51%) at all times (Freedom and People Ex. A at 9, Attachment 3 at 3, and Attachment 4 at 3; Tr. 511). Rachel Robinson has authority to vote her 30 shares (3%) of both Freedom and People at all times. Ponchitta Pierce has authority to vote her 70 shares (7%) of both Freedom and People at all times. Ms. Pierce claims to have authority to vote an additional 390 of Republic's shares in both Freedom and People (39%) in situations in which a simple majority is required for corporate action (Freedom and People Ex. at 1). As president of Republic, Mr. Price claims authority to vote these 390 shares, in addition to the 510 he already claims to vote, in situations requiring more than a simple majority (Freedom and People Ex. A at 8-9; Tr. 511). Mr. Price's voting authority may be revoked by Republic's Board of Directors at any time (Tr. 512).

87. Voting rights in Freedom and People are governed, in part, by shareholders' agreements made as of March 26, 1984, among: Ponchitta Pierce, Republic, and Freedom; and Ponchitta Pierce, Republic, and People. Pursuant to those agreements, Ponchitta Pierce may cause Republic Broadcasting Corporation to vote 390 of its shares of common stock in both Freedom and People as directed by Ms. Pierce. Ms. Pierce's right to direct the voting of 390 of Republic's shares in Freedom and People is irrevocable so long as Ms. Pierce holds shares of Freedom and People common stock and to the extent the shares are held by Republic. Republic, however, retains the right to vote such 390 shares of Freedom and People stock in the absence of a direction from Ms. Pierce and, in any event, on any matter that requires the approval of more than a simple majority of Freedom and/or People's shares (Freedom and People Ex. A, at 8, *et seq.*).

88. Freedom and People claim that Mr. Price is authorized to vote the remaining 510 shares of Republic stock in Freedom and People at all times, and to vote the 390 shares ascribed to the control of Ms. Pierce when she does not direct the voting as noted above. Freedom and People filed their integration statements in this proceeding on March 4, 1985. It was not until August 7, 1985, however, that Republic's Board of Directors signed a consent without meeting, which purported to authorize Mr. Price to vote the Republic stock in Freedom and People.

89. Republic's by-laws require written consent for actions taken by the Board of Directors outside of a meeting (RKO Ex. 11; Tr. 505). Robert Price could not recall whether he was given the voting authority at a formal meeting of the Republic Board of Directors (Tr. 501-02). Robert Price could not point to any reference to this authority in the minutes of the Board's meetings (Tr. 501-02), and his communications counsel has been unable to find any minutes recording the authority before August 1985 (Tr. 511). On August 7, 1985, the Board of Republic issued a written ratification of all actions taken by Robert Price regarding the voting of Republic's shares in Freedom and People and confirming his authority to vote the shares (Freedom and People Ex. A, Attachment 5).

90. Robert Price proposes to work full-time (at least 40 hours per week) as General Manager at the stations. As the General Manager, Mr. Price proposes to direct the overall operation of the stations, including the financial, administrative, sales, programming, and employment aspects (Freedom and People Ex. A).

91. Since 1972, Mr. Price has been President, Treasurer, a Director, and the Chief Executive Officer of Price Communications Corporation. It is Mr. Price's present intention to continue as the President and Chief Executive Officer of Price Communications and its various subsidiaries if those duties do not interfere with his duties as the General Manager of the stations (Freedom and People Ex. A at 11). It is Mr. Price's belief that he will be able to continue in his positions with Price Communications after becoming the General Manager. He currently works 7 days a week, consistently more than 15 hours per day (Tr. 492; Freedom and People Ex. A, pg. 11; RKO Ex. 14, at 59-60, 71; RKO Ex. 17 at 98). Price Communications has experienced staff people to whom Mr. Price can delegate a substantial portion of his present responsibility for overseeing the operation of Price Communications' stations (Freedom and People Ex. A, pg. 11; Tr. 490-91). Mr. Price has not, however, committed to discontinue any specific activities.

92. As President and Chief Executive Officer of Price Communications, Mr. Price currently oversees the operation of all radio and television stations licensed to subsidiaries of Price Communications, including the hiring and firing of station management, station budgets, and station programming. He has been involved with station management in selecting programming and engineering consultants and discussing program formats and promotional campaigns. He has also selected station accountants. Mr. Price makes sure that administrative functions, such as

reporting information to the Federal Communications Commission and the Securities and Exchange Commission, are carried out. He is also responsible for identifying and negotiating the purchasing, financing, and closing of media acquisitions. Subject to the direction of the Board of Directors, Mr. Price exercises general management and control of the business affairs of Price Communications. Mr. Price reports on operational matters to the Board of Directors, but he exercises virtually complete discretion over the day-to-day supervision of the corporation's activities (Freedom and People Ex. A at 4-5).

93. In carrying out his oversight responsibilities for Price Communications, Robert Price attempts to visit each Price Communications station several times each year. This travel and other business travel keeps him out of New York City for 2 or 3 days each week (Tr. 489-90). Mr. Price testified that he currently works 130 to 140 hours per week, almost 20 hours per day every day of the week, at his responsibilities at Price Communications (Tr. 492).

94. Mr. Price was born in New York City on August 27, 1932, and is a life-long resident of the city. He will continue to reside in New York City, Freedom and People's proposed community of license, in the event that Freedom and/or People's applications are granted (Freedom and People Ex. A).

95. Robert Price was admitted to the New York Bar in 1958. Thereafter, he served as a law clerk to the United States District Court Judge for the Southern District of New York (1958- 59). He worked as an Assistant United States Attorney for the Southern District of New York from 1959 to 1960. From 1960-1965, Mr. Price was a partner in the law firm of Kupferman & Price. In 1965, Mr. Price was sworn in as the Deputy Mayor for the City of New York and served in that capacity until December 1966 (Freedom and People Ex. A). Mr. Price served as Chairman of the New York City Port Authority Negotiating Committee for the World Trade Center (1955-56) and the New York City Policy Planning Council (1966).

96. Mr. Price served as special counsel to the New York State Joint Legislative Commission on Court Reorganization (1962-63), Assistant Counsel to the New York State Joint Legislative Commission on New York Banking Laws (1961-62), Chairman of the Government and Civil Service Division of the United Jewish Appeal of Greater New York (1966), co-chairman of the Metropolitan New York Red Cross Blood Drive (1966), and as a member of the national executive committee of the Columbia Law School Annual Drive (1966-67). He has been a member of the Council on Foreign Relations and a Director of the Columbia Law School Alumni Association. He is currently Chairman of the Committee for New York City Metropolitan Area Fundraising for the Alumni Association. He is past trustee of the Columbia University School of Pharmaceutical Sciences and the Birch Wathen School. He is a member of the Federal Communications Bar Association and was a member of the Communications Committee of the Association of the Bar of the City of New York.

97. Mr. Price was the president of the New York University Young Republican Club (1951-52) and National Collegiate Chairman of the Youth for Eisenhower (1952). He was Vice President of the New York Republican Club (1957-58), campaign manager for the congressional campaigns of John V. Lindsay (1958, 1960, 1962, and 1964) and the Lindsay campaign for Mayor of New York City (1965), delegate to the New York Republican State Convention in 1962 and 1966, and an adviser to New York Governor and Vice President Nelson A. Rockefeller in the 1960's and 1970's.

98. From 1963 until 1966, Mr. Price was the President and a Director of Atlantic States Industries, Inc., then the licensee of four radio stations: WNVY, Pensacola, Florida; WLOB and WLOB-FM, Portland, Maine; and WTSA, Brattleboro, Vermont.

99. If Freedom and/or People receive one or both construction permits, Ms. Pierce, a black female and long-term resident (20 plus years) of New York City, proposes to work at the stations full-time, at least 40 hours per week, as the Director of Programming. In that capacity, she will be responsible for directing the programming activities of the stations, including the overall supervision of entertainment programming and the news and public affairs departments. Ms. Pierce will work with community service organizations to develop proposals for local public affairs programs and public service announcements (Freedom and People Ex. B).

100. Ms. Pierce will also be responsible for developing, implementing, and monitoring Freedom's and People's policies to ensure that the stations comply with all FCC programming regulations and relevant state and local laws. Together with Robert Price, Ms. Pierce will have final hiring and firing authority with respect to all program personnel.

101. Ms. Pierce began her career in journalism in 1964 as a writer for Ebony magazine. By 1967, she had become the New York Editor for Ebony and New York Bureau Chief of the magazine's parent company, Johnson Publications. From 1968-71, Ms. Pierce served as Special Correspondent for CBS news, based in New York City. During that time, she contributed reports to the "CBS Evening News" and conducted interviews for the "CBS Morning News." From 1971-77, Ms. Pierce served as Contributing Editor for McCall's magazine. From 1973-77, Ms. Pierce also co-hosted WNBC-TV's Sunday magazine series, "The Sunday Show." From 1977-80, Ms. Pierce co-hosted WNBC-TV's "The Prime of Your Life," a public affairs series devoted to the needs and interests of the New York City metropolitan area's older residents. During that time, she also served as a staff writer (1976-77) and a Roving Editor (1977-80) for the Reader's Digest. Since 1982, Ms. Pierce has been co-producer and host of WNBC-TV's "Today in New York." Ms. Pierce has also written articles for Newsday and Family Circle magazines and produced a special radio program called "Women in Finance" on WMCA(AM) in New York.

102. In 1981, Ms. Pierce was appointed by New York City Mayor Koch to the Mayor's Advisory Committee on Minority Affairs. Since prior to 1982, Ms. Pierce has also served as an Honorary Commissioner on the New York City Mayor's Commission for Distinguished Guests (now the Mayor's Commission for Protocol). Since prior to 1982, Ms. Pierce has been a Director or Trustee for the Inner-City Scholarship Fund of the Catholic Archdiocese of New York, the African Student Aid Fund and The Voice Foundation, has served on the Manhattan Advisory Committee of the New York Urban League, and has been a member of the Women's Forum, a group of influential women in business and politics in New York City. Ms. Pierce served as Vice President of the Women's Forum in 1984-85 and as a Vice Chairman for the 9th Annual Inner-City Scholarship Fund Award Dinner in 1985 (Freedom and People Ex. B).

103. Since prior to March 1984, Ms. Pierce has served on the Editorial Advisory Committee of the Foreign Policy Association, as an original member of the Women's Board of the Madison Square Boys & Girls Club, as a Director of the National Coalition of 100 Black Women and the Third Street Music Settlement, and as a Trustee of the Children's Art Carnival. In 1985, Ms. Pierce became a member of the Board of Directors of the Dance Theatre of Harlem.

104. Mrs. Robinson is a 2% stockholder in both Freedom and People who does not propose to be integrated into the management of the stations (Tr. 523). Mrs. Robinson proposes the following role for herself as a stockholder of Freedom and People:

> Mrs. Robinson will draw on her years of community service experience in offering advice to the directors of Freedom and People and the management of Freedom and People's proposed stations concerning the needs of the minority communities in greater New York. Through her role as a stockholder, Mrs. Robinson will give input and guidance to the station management on ways in which the stations can meet the needs and improve the quality of life for the residents of the greater New York area (Freedom and People Ex. C).

Ms. Robinson does not state how many hours per week she will devote to this role.

105. Neither Freedom nor People owns any interest in an AM, FM, or television station, newspaper, cable television system, or any other medium of mass communication (Freedom and People Ex. A, pp. 11-12). Price Communications, through its wholly-owned subsidiaries (including Republic) owns eight AM stations, seven FM stations, three television stations, and several publications.

Radio

106. Republic wholly owns the following FCC licensees:

> Wayne Broadcasting Corporation Bay Broadcasting Corporation Gulf Coast Broadcasting Corporation United Radio Broadcasting Corporation Huntington Broadcasting Corporation Dane Broadcasting Corporation Eastern Michigan Broadcasting Corporation Central Tennessee Broadcasting Corporation Empire State Broadcasting Corporation

(Freedom and People Ex. A, Att. 17, pp. 304).

107. Wayne Broadcasting Corporation is the licensee of WOWO, an AM radio station licensed to Fort Wayne, Indiana. The Fort Wayne radio market is approximately the 100th largest radio market in the country and is served by more than 10 AM and 10 FM stations (*Id.*, p. 5; Stipulation pp. 4-5). [3]

108. Bay Broadcasting Corporation is the licensee of KIOI-FM, San Francisco, California. San Francisco is one of the largest radio markets in the United States and is served by over 10 AM and nearly 20 FM stations (Freedom and People Ex. A, pp. 5-6; Stipulation, p. 8).

109. Gulf Coast Broadcasting Corporation is the licensee of WTIX(AM), New Orleans, Louisiana. There are approximately 10 AM and 10 FM stations licensed to New Orleans (Freedom and People Ex. A, p. 6; Stipulation, p. 7).

110. United Radio Corporation is the licensee of KOMA and KAEZ-FM (now KIMY-FM), Oklahoma City, Oklahoma. More than 5 AM and 10 FM stations are licensed to Oklahoma City (Freedom and People Ex. A, p. 6; Stipulation, pp. 7-8).

111. Huntington Broadcasting Corporation is the licensee of WIOE-FM, Huntington, Indiana. WIOE-FM serves Huntington, Fort Wayne, and the surrounding area. The Fort Wayne radio market is served by more than 10 AM and 10 FM stations (Freedom and People Ex. A, p. 5; Stipulation, p. 5).

112. Dane Broadcasting Corporation is the licensee of WIBA and WIBA-FM, Madison, Wisconsin. In 1983, the population of Madison and the surrounding area was approximately 332,600 (Freedom and People Ex. A, p. 7; Stipulation, p. 6; RKO Ex. 10A, p. 20).

113. Eastern Michigan Broadcasting Company is the licensee of WNIC and WNIC(FM), Dearborn, Michigan. These stations serve the Detroit, Michigan, radio market which is the nation's sixth largest radio market, being served by more than 10 AM and 15 FM stations (Freedom and People, Ex. A, p. 7; Stipulation, pp. 3-4).

114. Central Tennessee Broadcasting Corporation is the licensee of WLAC and WLAC(FM), Nashville, Tennessee. The Nashville market is currently served by approximately 10 AM and 10 FM stations (Freedom and People Ex. A, p. 7; Stipulation, pp. 2-3).

115. Empire State Broadcasting Corporation is the licensee of WWKB, an AM radio station licensed to Buffalo, New York. The Buffalo market is served by more than 5 AM and 10 FM stations (Freedom and People Ex. A, p. 7; Stipulation, p. 3).

116. Atlas Broadcasting Corporation, a wholly-owned subsidiary of Price Communications, wholly owns Atlantic Broadcasting Corporation, the licensee of WIRK and WIRK(FM), West Palm Beach, Florida. West Palm Beach is served by approximately 10 AM and 10 FM stations (Freedom and People Ex. A, pp. 5-6; Stipulation, pp. 9-10; Tr. 521).

Television

117. Federal Broadcasting Corporation, a wholly-owned subsidiary of Price Communications, wholly owns the following FCC licensees:

> Cardinal Broadcasting Corporation
> Eagle Broadcasting Corporation
> Western Michigan Broadcasting Corporation

(Freedom and People Ex. A, Att. 17, pp. 4-5; Stipulation p. 5; RKO Ex. 9).

118. Cardinal Broadcasting Corporation is the licensee of KRGC-TV, a VHF television station licensed to Columbia/Jefferson City, Missouri (Freedom and People Ex. A, p. 6; Stipulation, pp. 5-6).

119. Eagle Broadcasting Corporation is the licensee of WEEK-TV, Peoria, Illinois (Freedom and People Ex. A, p. 6; Stipulation, p. 9).

120. Western Michigan Broadcasting Corporation is the licensee of WZZM-TV, Grand Rapids, Michigan (Freedom and People Ex. A, p. 7; Stipulation, p. 10).

Publications

121. Price Publishing Corporation, a wholly-owned subsidiary of Price Communications, wholly owns the following publishing companies:

New York Law Publishing Company
Red Bank Register, Inc.
Toms River Publishing Company

(Freedom and People Ex. A, Att. 17, pp. 12-13; Stipulation, pp. 10-11; RKO Ex. 9).

122. The New York Law Publishing Company publishes the *New York Law Journal* and the *National Law Journal*. The *New York Law Journal* is published daily, except Saturday, Sunday, and legal holidays, in New York City. It is a specialized publication, rather than a general circulation newspaper, serving as the 12,000 paid circulation official daily legal newspaper. The newspaper also publishes news of interest to the legal profession, including court calendars and decisions. The *National Law Journal* is a 35,000 weekly paid circulation national publication covering news and trends in the legal community (Freedom and People Ex. A, Att. 17, p. 12). The publishing company also publishes about 30 titles and conducts approximately 30 educational seminars around the United States. It also publishes 12 newsletters of interest to specialists in the legal profession (Tr. 479).

123. The Red Bank Register, Inc., publishes *The Register* and *The Sunday Register* (circulation 28,000), a daily newspaper in Red Bank, New Jersey. Toms River Publishing Company, Inc., publishes twice weekly *The Ocean County Reporter* in Toms River, New Jersey (Freedom and People Ex. A, Att. 17, p. 13; Stipulation, pp. 10-11).

124. The Red Bank and Toms River newspapers were previously owned by Capital Cities Communications, Inc., then licensee of WPAT(AM) and WPAT-FM, Paterson, New Jersey. Price Communications will divest the daily and Sunday *Register* and/or *The Ocean County Reporter* if ownership of one or both of the newspapers is found by the FCC to be inconsistent, under the multiple ownership rules, with Freedom and/or People serving as station licensee(s) in New York City (*Id.*).

125. The officers of both Freedom and People are: Robert Price (President and Treasurer); Ponchitta Pierce (Vice President); and Ellen S. Fader (Vice President and Secretary). The Directors of both Freedom and People are Ponchitta Pierce, Robert Price, and Steven Price (Freedom and People Ex. A, p. 8).

126. Robert Price, Steven Price, and Ellen S. Fader are officers and/or directors of the following FCC licensees:

Republic Broadcasting Corporation
Federal Broadcasting Corporation
Atlas Broadcasting Corporation

1. Robert Price - President, Treasurer, Director
2. Steven Price - Vice President, Director
3. Ellen S. Fader - Vice President, Secretary

Huntington Broadcasting Corporation
Gulf Coast Broadcasting Corporation
United Radio Corporation
Western Michigan Broadcasting Corporation
Eastern Michigan Broadcasting Corporation
Cardinal Broadcasting Corporation
Eagle Broadcasting Corporation
Central Tennessee Broadcasting Corporation
Empire State Broadcasting Corporation

1. Robert Price - President, Director
2. Steven Price - Vice President
3. Ellen S. Fader - Vice President, Secretary

Wayne Broadcasting Corporation
Clayton Broadcasting Corporation
Bay Broadcasting Corporation
Atlantic Broadcasting Corporation

1. Robert Price - President, Treasurer, Director
2. Steven Price - Vice President
3. Ellen S. Fader - Vice President, Secretary

(*Id.*)

127. Freedom and People have specified the facilities presently used by RKO General, Inc, for WOR(AM) and WRKS-FM. Freedom and People will maintain the auxiliary power sources for those facilities. Freedom and People intend to have auxiliary power available at their studio(s) and transmitter site(s) (Freedom and People Ex. , p. 12).

South Jersey Radio

128. South Jersey Radio, Inc., is a New Jersey stock corporation formed in 1955 for the purpose of acquiring and operating broadcast stations, and for other purposes. The officers, directors and stockholders of South Jersey Radio are as follows: Howard L. Green, President, a director and 50% common voting stockholder; Donald M. Simmons, Vice President, a director and 50% common voting stockholder; and Joseph J. Jackler, Secretary/Treasurer. Common stock is voting stock and is the only class of stock authorized for issuance (South Jersey Radio Ex. 1).

129. South Jersey is an applicant for both the challenged AM and FM RKO facilities. It proposes Yonkers, New York, as the city of license for the standard broadcast station. No South Jersey principal is to be integrated into the operation of either of the proposed stations.

130. South Jersey is the licenesee of WMGM-TV in Wildwood, New Jersey, WMGM-FM in Atlantic City, New Jersey, and WOND(AM) in Pleasantville, New Jersey; South Jersey Radio Petition for Leave to Amend, filed February 7, 1986, and granted by *Order* FCC 86M-800, released March 3, 1986). South Jersey also publishes *The Sentinel - Ledger* in Ocean City-Somers Point, New Jersey, and has entered into an agreement to become 50% owner of a permit to construct MDS Channel 1 in Wildwood, New Jersey; South Jersey Radio Petition for Leave to Amend, filed December 23, 1985, and granted by *Order* FCC 86M-224, released January 16, 1986).

131. South Jersey's owners also wholly own WENY, Inc., licensee of the following stations: WENY(AM), Elmira, New York; WLEZ(FM), Elmira, New York, WENY-TV, Elmira, New York; WO6AR (TV translator), Hornell, New York; WO7BJ (TV translator), Ithaca, New York; WKAL(AM), Rome, New York; and WTCO(FM), Rome, New York.

132. Howard Green, South Jersey's President and 50% stockholder, serves as a consultant for a new UHF television station to operate in Charleston, South Carolina (*Id.*, pp. 9-10, 37-55). The five-year consultancy is to include assistance in purchasing equipment and programming.

133. WMGM-TV operates on Channel 40 in Wildwood (1980 population: 4,913). There are 204,600 households in the counties covered or penetrated by the WMGM-TV contour. WMGM-FM is licensed to Atlantic City (1980 population: 40,199). There are 194,119 persons in the metropolitan Atlantic City area and, as of 1984, WMGM-FM covered 1,323 square miles and 333,080 persons within its 60 dBu contour. WOND, an unlimited-time AM station, is licensed to Pleasantville (1980 population: 13,435). The FCC's most recent data shows WOND's 0.5 mV/m contour covering 908.7 square miles and 138,121 persons.

134. South Jersey publishes *The Sentinel - Ledger* weekly (twice-weekly in the summer) with a paid circulation of 10,748 households as of September 30, 1984. Ocean City has a 1980 U.S. Census population of 13,949 and Somers Point has a 1980 U.S. Census pupulation of 10,330. The newspaper's paid circulation is higher during the summer months (by probably less than 10-15%), when the resident populations in Cape May and Atlantic Counties at least double in size. There are no other daily or weekly newspapers published in either Ocean City or Somers Point.

135. WENY-TV, WLEZ(FM) and WENY(AM) are licensed to Elmira, New York (1980 population: 35,327). WENY-TV operates on Channel 36. The Elmira ADI is comprised of 86,400 television households, with 228,900 persons in those households. WNEY-TV places a Grade B contour over Binghamton, New York (1980 population: 55,860). WENY-TV is carried on WO6AR in Hornell (1980 population: 10,234) and will be carried on WO7BJ in Ithaca (1980 population: 28,732). Hornell and Ithaca are located within WENY-TV's Grade B contour. WNEY(AM)'s 0.5 mV/m contour for its 1 kw facilities covers 2,736 square miles and 183,902 persons according to the most recent data on file with the FCC. WLEZ(FM)'s most recent data reflects coverage of 650 square miles and 134,800 persons.

136. WKAL(AM) and WTCO(FM) are licensed to Rome, New York (1980 population: 43,826), which is approximately 100 miles northeast of Elmira. WKAL(AM)'s 0.5 mV/m contour covers 1,571 square miles and 167,125 persons according to the most recent data on file with the Commission. WTCO(FM)'s coverage includes about 100,000 persons (Joint Stipulation No. 1, pp. 6-7).

137. Atlantic City, Pleasantville, Ocean City, and Somers Point, New Jersey, are approximately 100 miles from New York City. The approximate distances from New York City to the locations of South Jersey's other media interests are: Wildwood, New Jersey, 130 miles; Elmira, New York, 185 miles; Rome, New York, 190 miles; Ithaca, New York 190 miles; Hornell, New York, 235 miles; and Charleston, South Carolina 770 miles (Rand McNally Road Atlas, 60th Anniversary Edition--facts officially noticed).

138. South Jersey has proposed to use RKO's existing facilities, maintaining auxiliary power generation equipment at its AM and FM studio and transmitter locations (South Jersey Radio Ex. 3, p. 1; South Jersey Radio AM application, Section V-A; South Jersey Radio FM application, Section V-B).

Women Owning Radio

139. Women Owning Radio, Inc., is a New York corporation incorporated in May 1983 (Women Ex. 13, App. A). Women is authorized to issue 319 shares of common stock with a par value of .01 per share. The common stock is divided into two classes: 221 shares of Class A voting and 98 shares Class B non-voting.

140. Women claims 100% integration credit for the stock owned by its Class A shareholders and claims that its Class B Shareholders are passive investors not to be factored into the integration criterion.

141. Women's stock is distributed as follows:

Name and Office	Number of Shares	Class	Percentage of Voting
Gail Trell Barker President, Director	17	A	16.67%
Georgia L. McMurray Vice President, Director	17	A	16.67%
Dinah M. Robinson Vice President, Director	17	A	16.67%
Teresa DiTore Vice President, Director	17	A	16.67%
Madeline Amgott	17	A	16.67%
Devorah Watkins Gilbert Treasurer, Director	17	A	16.67%
Kay Wight	14	B	--
Anne P. Crawford	14	B	--
Sylvia Westerman	14	B	--
Arlene Francis	14	B	--
Lucia Suarez	14	B	--
Marian J. Calale	14	B	--

142. Under Women's Certificate of Incorporation, the Class B shareholders may vote on corporate merger or consolidation, non-judicial dissolution, any amendments or changes in the Certificate of Incorporation other than changes in the corporate office or the address of the registered agent, any amendment of, or change in, the by-laws of the corporation, any election or consent under the Internal Revenue Code or state tax statute, and the authorization for the issuance of, and consideration for,

any shares of common stock of the corporation. Since these matters require the affirmative vote or consent of two-thirds (2/3) of the total number of common stock, the holders of a minimum of 30 Class B shares must consent to any of the above actions (Women Ex. 13, App. A. Cert. of Incorp., Art. Seventh).

143. Between May 1983, when Women was incorporated, and February 1985, the Class B shareholders played a role in Women's venture. Women's principals have met approximately 17 times since Women filed its application in May 1983 and all the shareholders, whether voting or non-voting, were invited to attend virtually all of these meetings. Women made no formal distinctions between shareholders' meetings and Board of Directors meetings and the Class B shareholders participated in both (Women Ex. 13, Apps. F and G; Tr. 542, 629, 672, 681-82, 693, 723, 579). For example, Anne Crawford, a Class B shareholder, was told that, if she could not personally attend, she should be represented at the meetings because her presence was required to form a quorum (Tr. 806).

144. Ms. Barker testified that it was the Class B shareholders "birthright as a group" to attend the meetings prior to February 1985:

> "They were intimately involved in the processing of the application, and each of them were contributing10,000 through this process. As a part of our corporate documents, they had the ability to vote to decide not to go further with this and to dissolve the corporation" (Tr. 599, 625, 630-31, 648).

Ms. Barker explained that the Class B shareholders had expressly forfeited their "birthright" in January 1985, by expressly giving up their ability to prevent further prosecution of Women's application (Tr., 649).

145. At least one Class B shareholder was present at every meeting between May 24, 1983, and January 16, 1985. On two occasions, August 16, 1983, and April 10, 1984, the Class B shareholders attending the meeting, in person or through representatives, outnumbered the Class A shareholders (Women Ex. 13, Apps. F and G).

146. Class B shareholder Kay Wight, who along with Madeline Amgott originally organized the group, attended ten meetings (*Id.* ; Tr. 540-41, 742, 566-68). In fact, the May 15, 1984, Meeting of the Board of Directors and the November 14, 1984, shareholders' meeting were held at her house (Women Ex. 14, App. F, Minutes of Meeting of Board of Directors, 5/15/84, and Minutes of Meeting of Stockholders, 11/14/84; Tr. 554, 568-69). Lucia Suarez attended eight meetings, as did Sylvia Westerman (Women Ex. 13, Apps. F and G; Tr. 766, 768-69). Marian Calale attended seven meetings, two in person, two by representative, two by telephone, and one by proxy. Arlene Francis, who did not join the application until April 10, 1984, attended three meetings in person and one by telephone (Women Ex. 13, Apps. F and G).

147. The Class B shareholders actively participated in the meetings they attended. As Teresa DiTore, Women's Vice President, testified:

> Q. You recall, don't you that the B shareholders are not particularly a quiet group and that they liked to express their opinions when they attended meetings?
>
> A. Yes.
>
> Q. And that none of the Class B stockholders were substantially less quiet when among the rest of the Class B stockholders?
>
> A. Correct.
>
> Q. They talked quite a bit when they attended; is that correct?
>
> A. Yes they did (Tr. 781).

148. Similarly, Ms. Barker accepted her counsel's characterization of the Class B shareholders participation as "very full" and Ms. Gilbert agreed with her counsel that "all stockholders, including the non-voting stockholders, have been invited to attend and have been permitted to participate fully in the discussion[s]" (Tr. 648, 723).

149. Sylvia Westerman prepared an organizational chart outlining a proposed management structure for Women's operation of WOR, which was presented to the shareholders at the January 17, 1984, shareholders' meeting (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 1/17/84; Tr. 580). The management assignments for Women's shareholders were made on the basis of Ms. Westerman's chart (Tr. 782).

150. Ms. Westerman testified that she intended the chart to be used as the basis for brainstorming on the management plans for Women's proposed station (Tr. 764). Her organizational chart was discussed at the February 21, 1984, meeting of shareholders. Based on those discussions, shareholders were assigned areas of interest to prepare for discussion at the next meeting. Ms. Couch was assigned to promotion, Ms. Suarez and Ms. Westerman to programming and news, Ms. Westerman to engineering, Ms. Crawford to finance and Ms. Westerman to station responsibility (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 2/21/84). The chart served as the basis for a brainstorming session at the May 15, 1984, Board of Directors meeting (*Id.*, and Minutes of Meeting of Shareholders, 2/21/84, Minutes of Meeting of Board of Directors, 4/10/84, Minutes of Meeting of Board of Directors, 5/15/84). Ms. Barker testified that the group had a desire to have people who are smart contribute ideas. "[Y]ou had a lot of experienced people in the room and we . . . sat around and traded ideas" (Tr. 597).

151. At the same meeting where she presented her organizational chart, Ms. Westerman suggested that the corporation's funds be placed in an interest bearing account (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 1/17/84; Tr. 763). At the previous meeting held on September 13, 1983, Ms. Westerman distributed two press articles about programming changes at WOR that led to a discussion of programming strategies and demographics (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 9/20/83; Tr. 761-62).

152. At a shareholders meeting where the Class B shareholders outnumbered the Class A shareholders, Suzan Couch, who was then a Class B shareholder, was selected to draft a "functions and responsibilities" questionnaire to be completed by each of Women's shareholders (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 8/16/83). Ms. Couch was chosen for this task because of

her skill as a writer (Tr. 548, 603). At the same meeting, the attending shareholders also reached a consensus that no public relations effort would be taken on behalf of Women until the Los Angeles television proceeding had terminated (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 8/16/83; Tr. 547).

153. Ms. Crawford and Ms. Wight participated in the unanimous decision to admit Sylvia Westerman over three other candidates as a Class B stockholder (Women Ex. 13, App. F, Minutes of Meeting of Shareholders, 7/20/83; Tr. 544-47, 638-40). Similarly, Ms. Wight and Ms. Suarez both participated in the unanimous vote to admit Arlene Francis as a Class B shareholder (Women Ex. 13, App. F, Minutes of Meeting of Board of Directors, 3/14/84; Tr. 543).

154. Ms. Crawford, Ms. Suarez, and Ms. Westerman participated in the decision to allow Ms. Francesca Beale additional time to cure her default on payments due pursuant to the Shareholders Agreement and to allow her to try to sell her shares (Women Ex. 14, App. F, Minutes of Meeting of Shareholders, 1/17/84). Class B shareholders also participated in the decision to revise the corporation's payment schedule (*Id.*, Mintues of Meeting of Board of Directors, 3/14/84; Tr. 628). At the Board meeting held May 15, 1984, Ms. Wight, a Class B shareholder, suggested that Women consider reimbursing Francesca Beale for her initial investment minus expenses (Women Ex. 13, App. F, Minutes of Meeting of Board of Directors, 5/15/84; Tr. 554). The consensus opinion of the members participating in the meeting, including Ms. Calale and Ms. Westerman, was that the question not be reopened (Tr. 554-55, 631).

155. In January 1985, Women decided that since the case was "heating up," the Class B shareholders would not be invited to the Board of Directors meetings beginning with the meeting held on February 20, 1985 (Tr. 599; Women Ex 13, App. F, Minutes of Meeting of February 20, 1985).

156. Women's Certificate of Incorporation gives the Class B shareholders the right to convert their Class B shares to Class shares at a rate of 17 Class A shares for every 14 Class B shares. The permission of the Class A shareholders is not required to enable the Class B shareholders to exercise their conversion rights (Women Ex. 13, App. A).

157. As of both the "B" cut-off date in this proceeding and the date Women filed its Integration Statement, the Class B shareholders had the right to exercise their conversion rights beginning 5 years after the date the stock was first issued. Stock was first issued on September 20, 1983. Therefore, the conversion rights could be exercised as early as September 1988 (Women Ex. 13, App. F, Minutes of Meeting of Shareholders 9/20/83). According to Devorah Gilbert, Women's Treasurer, Women's principals believed that this time frame would allow the Class B shareholders to exercise their conversion rights during "the early days of the takeover of the station" (Tr. 724).

158. If all of the Class B shareholders exercised their conversion rights, they would own 119 shares of Class A stock, whereas the Class A shareholders would continue to own 102 shares of Class A stock. Thus, upon conversion, the former Class B shareholders would jointly control the management of the station (Women Ex. 13, pp. 1-3 and App.).

159. On April 16, 1985, after Women filed its Integration Statement, Women amended its Certificate of Incorporation to provide that the conversion rights could not be exercised until 5 years after Women is granted a license by the FCC to operate its proposed station (Women Ex. 13, App. A, Certificate of Amendment, 4/16/85). Women felt it necessary to change the conversion rights in order "to ensure the integrity of the integrated management" (Tr. 658).

160. Women proposes to integrate its six Class A shareholders into station management.

161. Gail Trell Barker was born on July 19, 1942. She currently maintains two residences, one at 235 East 73rd Street in New York City, where she resides Monday through Friday, and the other at 111 Parsonage Road, Greenwich, Connecticut, where she resides Friday evening through Sunday. Ms. Barker is registered to vote in Greenwich. Ms. Barker's residence in Connecticut is located within Women's proposed service area (Women Ex. 1, p. 1; Tr. 578).

162. Ms. Barker proposes to be employed at Women's station full-time, a minimum of 40 hours per week, as the station's general manager. In that capacity, she will direct and supervise the day-to-day operation of the station and its employees (Women Ex. 1, p. 8).

163. Ms. Barker has resided in New York City for most of her life. Since 1977, she has maintained her second residence in Greenwich, Connecticut. Her civic activities have included serving as a Member of the Board, and Chairman of the National Committee of the New York City Chapter of the American Red Cross. She has also been a member of the Greenwich Reform Synagogue since 1977 (Women Ex. 1).

164. Ms. Barker was employed in the broadcasting industry from 1968 to 1982. From 1964 to 1968, Ms. Barker was employed in the advertising business. Ms. Barker's broadcast positions have included: Account Executive, WCBS-TV, New York City; General Sales Manager, WCBS-TV; Director of Sales, WCBS-TV; Vice President Sales, CBS Television Stations Division; Vice President Sales and Marketing, CBS Radio Division. In 1982, Ms. Barker jointly formed CB Communications, Inc., a communications consulting firm. She is the Vice President, Secretary/Treasurer, a director and 50% shareholder of CB Communications. Ms. Barker has an agreement to acquire a less than two percent interest in WBCT-TV, Bridgeport, Connecticut (Tr. 608-10).

165. Georgia McMurray, a black female, was born on March 18, 1935. She presently resides at 784 Columbus Avenue, New York, New York (Women Ex. 2).

166. Ms. McMurray proposes to be employed at the station full-time, a minimum of 40 hours per week, as the station's Director of Community Affairs. In that capacity, she will implement and administer the station's EEO program, develop and implement community programs addressing social needs within the station's proposed service area, and supervise the staff assigned to her department.

167. Ms. McMurray has resided in New York City since 1962 (Women Ex. 3) and has been active in numerous civic organizations in the Metropolitan New York Area. She has been a member of the New York City Chapter of the National Association of Social Workers since 1962. She served as chapter president between 1978 and 1982. Since 1969, Ms. McMurray has served as a Member of Board of the Public Education Association. She served as

the vice president of that organization from 1975 until 1982. Ms. McMurray currently serves as the Chairperson of the Allocations Committee of the Associated Black Charities in New York City and as the President of Community Counseling and Mediation Services in New York City. Ms. McMurray is also a member of the Women's Forum and was a Board member from 1978-80. She is a member of the Black Agency Executives, the Medical Health Research Association, and the Free To Be Foundation (Advisory Board Member).

168. From 1974 to 1977, Ms. McMurray served as a Member of the Board of the Harlem Branch of the YWCA. Between 1972 and 1974, she served as a Member of the Board and Chairperson of the Parent Locator and Support Program Advisory Committee of the Community Council of Greater New York. From 1965-1970, Ms. McMurray served as the Secretary of the Board of Directors of Harlem Teens for Self-Help. From 1967 through 1969, she served as the Chairperson of the Program Committee of the Haryou Act Community Corporation, an anti-poverty program.

169. Ms. McMurray received a Bachelor of Science degree from Temple University in 1956. In 1962, she received a Masters degree in Social Services from the School of Social Work and Social Research of Bryn Mawr College. Since 1976, Ms. McMurray has been employed by the Community Services Society of New York, first as Director of Public Affairs then as Deputy General Director. In the event that Women's application is granted, Ms. McMurray will terminate her employment with Community Social Services to fulfill her full-time commitment to Women's station. However, she expects to continue performing services on a limited basis as an independent consultant.

170. Dinah M. Robinson, a black female, was born on October 12, 1944. She currently resides at 44 West 62nd Street, Apt. 10-A, New York, New York (Women Ex. 3).

171. Ms. Robinson proposes to work at Women's station full-time, a minimum of 40 hours per week, as the station's Sales Manager. In that capacity, she will supervise the sales and marketing activities of Women's proposed station.

172. In 1967, Ms. Robinson received a Bachelor of Arts degree in Advertising from Michigan State University, East Lansing, Michigan. From August 1973 to February 1982, Ms. Robinson was employed as a Network Sales Account Executive by American Broadcasting Company, Inc. Ms. Robinson is currently a self-employed media consultant. In the event that Women's application is granted, she will terminate her consulting activities and any other full-time employment to devote herself full-time to Women's proposed station.

173. Teresa DiTore, a Hispanic female, was born on January 27, 1950, in the Dominican Republic and was naturalized as a citizen of the United States in 1968. Since 1973, Ms. DiTore has resided at 99 Charles Street, Mineola, New York, within Women's proposed service area (Women Ex. 4).

174. In the event that Women's application is granted, Ms. DiTore proposes to work full-time, a minimum of 40 hours per week, as the station's Director of Community Affairs. In that capacity, she will be responsible for the management and development of local public affairs programming. Ms. DiTore will spend approximately one day per week working on public affairs programs for which she will be the on-air host.

175. From 1961 to 1973, Ms. DiTore resided in Brooklyn, New York, a borough of New York City. In 1969, Ms. DiTore received an Associate's degree from Manhattan Community College, which is part of the City University of New York (Women Ex. 5).

176. From April 1975 to May 6, 1983, Ms. DiTore was employed as Director of Community Affairs by WCBS(AM), New York, New York. From January 1972 to April 1975, Ms. DiTore was employed as an Administrative Assistant in the Department of Editorials and Community Affairs at WCBS(AM) (Women Ex. 4).

177. During the time that Ms. DiTore was employed as the Director of Community Affairs at WCBS(AM), she participated in some civic activities in the Metropolitan New York Area. She served as a member of the Board of St. Mark's in the Bowery, and of Impact on Hunger. She also participated in the Big Brothers/Big Sisters of Greater New York and the Inner City Scholarship Fund.

178. Madeline Amgott was born in New York City, and she currently resides at 168 West 86th Street, New York, New York. Ms. Amgott also maintains a residence at 10 Pine Point Road, Rowayton, Connecticut, which is located approximately 44 miles from New York City, within Women's proposed service area (Women Ex. 5). Ms. Amgott resides in Connecticut during July and August (Tr. 737).

179. Ms. Amgott proposes to work full-time, a minimum of 40 hours per week, at Women's proposed station as the Program Director. In that capacity, she will direct and supervise the programming service to be provided by Women's proposed station. Ms. Amgott testified that she hopes to be involved with public affairs programming, but the station's Public Affairs Director will not report to her (Tr. 750).

180. Ms. Amgott has resided in New York City for most of her life (Women Ex. 5, p. 1). From 1980 to the present, Ms. Amgott has been a member of the Advisory Board of Manhattan Marymount College in New York City. Ms. Amgott is a participant in the New York City Board of Education Open Door Speaker's Bureau (Tr. 752). Ms. Amgott is a member of the Wetland Association of Rowayton, Connecticut, and the NOW Legal Defense Fund Women Ex. 5).

181. Since 1983, Ms. Amgott has been employed as an independent TV producer and consultant (Women Ex. 5, p. 2; Tr. 737). She currently produces a series of programs for King Features Entertainment called "Good Housekeeping: A Better Way." These programs are carried by Lifetime Cable Network, which can been seen in New York City and throughout the country. These programs are also being sold in syndication and will be viewed over traditional broadcast stations. Ms. Amgott serves as a media consultant to the American Journal of Nursing, Inc., which is located in New York City (Women Ex. 5; Tr. 739). Ms. Amgott is also a media consultant for Eastern Airlines Businesswoman Newsletter. Ms. Amgott will terminate her consulting and production activities in the event that Women's application is granted (Women Ex. 5).

182. Ms. Amgott recently produced a pilot for WNET, a non-commercial television station licensed to Newark, New Jersey (Tr. 738). In 1983, Ms. Amgott produced a segment for the NBC television program "Monitor" titled

"Fashion Is Not Soup." From 1978 to 1982, Ms. Amgott was employed as CBS News Staff Producer and Writer for *60 Minutes, Walter Cronkite's Universe, 30 Minutes* and the *CBS Morning News* with Bill Kurtis and Diane Sawyer. In 1982, Ms. Amgott received an Emmy Award as producer of "Growing Up in the Middle East" which was aired on *60 Minutes*. From 1971-1978, Ms. Amgott was employed at Station WNBC-TV, New York as Producer of WNBC's syndicated series *Not For Women Only*. She also produced and wrote specials for NBC called *Women and Men, Children of Divorce, Becoming Jeanne : A Search for Sexual Identity*. Between 1963 and 1971, Ms. Amgott worked as a freelance television producer and writer. From 1962-1963, she produced WABC-TV, New York's *Big News*. From 1955 through 1962, Ms. Amgott was employed by CBS as a news and public affairs researcher, assistant, associate producer and writer, radio news and feature producer, and feature coordinator (Women Ex. 5, pp. 3-4).

183. Devorah Watkins Gilbert, a black female, was born on February 5, 1947. She currently resides at 305 West 72nd Street, New York, New York (Women Ex. 6).

184. Ms. Gilbert proposes to be employed full-time, a minimum of 40 hours per week, as the station's Director of Finance Administration. In that capacity, she will direct and supervise the accounting and control functions of the station, including traffic and continuity functions.

185. Ms. Gilbert has resided within Women's proposed community of license since 1973 (Women Ex. 6). For the past 3 years, Ms. Gilbert has devoted the equivalent of 5 days a year to fundraising activities on behalf of the Council of Churches, City of New York. Since 1981, she has also engaged in fundraising activities on behalf of the Children's Art Carnival in Harlem. Since 1984, Ms. Gilbert has engaged in fundraising and co-sponsored educational events as a member of the Business Executives for National Security, New York City Chapter. Ms. Gilbert has been a member of the Canaan Baptist Church in New York City since 1983.

186. Ms. Gilbert earned a Bachelor of Arts degree in Economics from Radcliffe College and a Masters in Business Administration from the Harvard Business School. Between 1973 and 1977, Ms. Gilbert was employed by CBS, Inc., in areas not related to CBS' broadcast business. Since 1980-1981, Ms. Gilbert has been employed as a freelance business consultant (Women Ex. 6). She works out of her home, approximately 5 to 10 days per month (Tr. 691).

187. Women has no ownership interest in any medium of mass communications.

188. Gail Trell Barker owns less than one (1%) percent of the total issued and outstanding stock of CBS, Inc., and Telepictures, Inc. Ms. Barker's husband is employed as the Vice President, Chief Financial Officer by the CBS/Fox Company which produces, markets and distributes video cassettes and video disks (Women Ex. 1).

189. Dinah M. Robinson owns less than one (1%) percent of the total issued and outstanding stock of ABC (Women Ex. 3).

190. Devorah Watkins Gilbert has no ownership interest in any medium of mass communications. Her husband is employed as a Vice President of Project Planning and Development in the Sports Division of the National Broadcasting Company. Ms. Gilbert stated in her direct case exhibit that she has lived separately from her husband for several years and is not familiar with the details of his work (Women Ex. 6).

191. Marian Calale owns less than one (1%) percent of the total issued and outstanding stock of RCA. Since 1984, she has been employed as the Director of Eastern Sales Development of the Network Sales and Marketing Division of the National Broadcasting Company (NBC) in New York City. She does not have any involvement with the programming or programming policies of the NBC television network or any of the NBC owned-and-operated radio or television stations (Women Ex. 7).

192. Arlene Francis was employed by station WNBC-TV, New York, as a co-host of a weekly half-hour program entitled "The Prime of Your Life." She is also co-host of a two-hour radio program aired once a week by WOR(AM) (Women Ex. 9).

193. Lucia Suarez is employed as a staff senior producer and camera director at WNBC-TV, producing four local public affairs specials per year (Women Ex. 10).

194. Kay Wight owns less than one (1%) percent of the total issued and outstanding stock of CBS, Inc. Since 1981, Ms. Wight has served as the Vice President of Compliance and Administration for the CBS Sports Division in New York City. She is responsible for ensuring that the television network sports programming complies with the FCC's sponsorship identification policies (Women Ex. 12).

195. Women proposes the use of auxiliary power.

S/G Communications

196. S/G is a limited partnership. It is composed of three general partners and one limited partner, whose identities and shares of income/losses and voting control are as follows:

Name	Interest	Percent Distributions	Percent Control
Howard M. Squadron	General Partner	25.0%	50%
Simon P. Gourdine	General Partner	12.5%	25%
Patricia Gourdine	General Partner	12.5%	25%
Harvey Karp	Limited Partner	50.0%	0%

S/G Ex. 1.

197. Section 18 of the S/G Limited Partnership Agreement provides as follows concerning the activities of limited partners:

> The General Partners shall have sole control of the Partnership business, and the Limited Partners shall take no part in, nor interfere in any manner with, the conduct or control of the Partnership business or the sale, leasing or refinancing of its assets, and shall have no right or authority to act for or bind the Partnership.

(Magna Media Ex. 11, pp. 15-16).

198. Section 14 of the Agreement specifies the powers of the General Partners:

The General Partners shall have complete and exclusive control over the management of the Partnership business and affairs, and the Limited Partners shall have no right to participate in the management or the conduct of the Partnership business and affairs nor any Partner to act for or on behalf of the Partnership in any respect whatsoever.

199. Howard M. Squadron intends to work on a full-time basis (at least 40 hours per week) as General Manager of the proposed stations with responsibility for oversight of all operations (S/G Ex. 2). Since 1954, Mr. Squadron has been one of the senior partners of the law firm of Squadron, Ellenoff, Plesent & Lehrer. The firm has approximately 30 lawyers and a non-legal staff of about 70 (Tr. 855-56). Mr. Squadron has been responsible for obtaining clients representing about 40% of the firm's billings, including its largest client, the Murdoch organizations. Although he does not perform all of the day-to-day work for this client, he would be involved in any "serious critical problems" or "policy matters" concerning that client (Tr. 860-62). The law firm has represented Mr. Murdoch since 1972 and holds a position analogous to that of General Counsel for his organizations (Tr. 862). Mr. Squadron testified at S/G Ex. 2, p. 7, that he would limit the work with the law firm to a level consistent with his commitment to S/G. See, also, Tr. 868-71.

200. Mr. Squadron has lived in New York City since his birth in 1926, and he will continue to reside within New York City should S/G receive grants in this case (S/G Ex. 2).

201. Mr. Sqadron's past and current involvement in civic, community and professional affairs include the following:

American Jewish Congress, member 1950- present, past President 1978-84, past Chairman of New York Metropolitan Council (1964), past Chairman of the National Governing Council, National Commission of Law and Social Action, and past Senior Vice President

Conference of Presidents of Major American Jewish Organizations (Chairman, 1980-1982)

Middle East Business Group for Peace and Development (current)

Council for a Secure America (current)

People for the American Way, board member (current)

55th Street Dance Theatre Foundation, Inc., Chairman of Board (current)

Foundation for the Joffrey Ballet, Inc. (National Trustee of the Board of Directors (current), Past Chairman of Executive Committee)

New York City, New York State and American Bar Associations (current)

Park River Independent Democrats (1960-1975)

Democratic Congressional Candidate, 19th Congressional District, New York City (1970)

Democratic National Convention, at large Delegate to Platform Committee (1984)

S/G Ex. 2.

202. Simon P. Gourdine intends to work on a full-time basis (at least 40 hours per week) as Assistant General Manager and Director of Operations and Sales at the proposed stations. He will be responsible for all on-air operations, programming, staffing and supervision of the traffic and production departments. He will also be responsible for implementation and supervision of the EEO program, recruitment of staff, determining sales goals and supervision of the sales staff to meet sales goals (S/G/ Ex 3). Mr. Gourdine is a black male who has resided in New York City since 1944.

203. Mr. Gourdine graduated from the City College of New York in 1962, Fordham University Law School in 1965, and Harvard Business School's Management Development Program in 1979. From 1965-67, Mr. Gourdine was an officer (Captain) in the United States Army. After his discharge from the Army, he served as Assistant United States Attorney for the Southern District of New York from 1967-69 and from 1969-70 was employed in the legal department of the Celanese Corporation in New York City. From 1970 to 1982, Mr. Gourdine worked for the National Basketball Association, first as assistant to the Commissioner, then as Vice President of Administration and, ultimately, as Deputy Commissioner and chief operating officer. From 1982-84, Mr. Gourdine was Commissioner of the New York City Department of Consumer Affairs and was a member of the Mayor's "kitchen cabinet" which met once every other week to provide advice and counsel to the mayor. Since March 1982, Mr. Gourdine has been employed as Secretary of the Rockefeller Foundation, a not-for-profit corporation headquartered in New York City and one of the five or six largest charitable foundations in the country. Should S/G receive a grant in this case, Mr. Gourdine will terminate his current employment.

204. Patricia Gourdine intends to work full-time (at least 40 hours per week) as Public Affairs Director of the proposed stations. Her responsibilities will include ascertainment of community needs and interests, selection of needs to be addressed by local programming, supervision of production and scheduling of public affairs programming and public service announcements, and coordination of public relations activities with particular emphasis on minority groups and organizations (S/G Ex. 4; Tr. 332-33, 342).

205. Mrs. Gourdine graduated from the City College of New York in 1963 with a B.A. degree in liberal arts. From 1963-70, she taught high school English in the New York City public school system. Since 1970, she has not held full-time employment and has been a homemaker for her husband and their children. In 1979-80 and 1984-present, she has worked part-time (approximately 10 hours per week) at a preschool in the Bronx; and since 1984, she has also worked part-time (approximately 4 hours per week) for the New York City Board of Education teaching Eng-

lish to adults as a second language. Should S/G receive grants in this proceeding, Mrs. Gourdine would terminate her part-time employment and employ housekeeper to enable her to fulfill her full-time commitment to S/G (S/G Ex. 4; Tr. 316-17, 249-50).

206. Mrs. Gourdine is a black female, and will continue to live in New York should S/G receive grants herein.

207. Neither S/G, nor any of its partners, has any interest in any medium of mass communications (S/G Ex. 1-5). S/G proposes auxiliary power equipment (S/G Ex. 5).

Cozzin Communications Corporation

208. Cozzin Communication Corporation is owned 51% by Mr. William H. Cosby, Jr., and 49% by Mr. Joseph Zingale. Mr. Zingale is President, Secretary and Director of Cozzin. Cozzin has no other officers or directors (Cozzin Ex. 1).

209. Cozzin is the permittee of Low Power Television Station W69AY, Alachua, Florida. This station is on the air. In the event that Cozzin receives a grant of its AM or FM applications as a result of a decision on the merits, it will divest this station. (*Id.*)

210. The parties stipulated that Mr. Cosby has the following relationships with the indicated programs and proposed programs:

(a) *The Bill Cosby Show*. This program is produced in Brooklyn, New York, by Carsee-Werner Co., which has a network exhibition contract with NBC. Mr. Cosby has no ownership interest in Carsee-Werner. Carsee-Werner is the owner of the show; however, Mr. Cosby does have a royalty interest in the show. Mr. Cosby is employed by Carsee-Werner as talent, writer and consultant on the program. Mr. Cosby also has certain control over production: he approves the head writer and cast members. He has no official written control over the script; however, it is agreed that as a practical matter he has a significant say in the content of the program. Mr. Cosby has no control over distribution of the show but has the right to approve the sale of the show. The show is broadcast in the New York/ Scarsdale area over Television Station WNBC.

(b) *The Fat Albert Show*. No new programs are being produced in this cartoon series. Mr. Cosby is the 50% owner of the series, for which he was producer, a writer and an actor. Mr. Cosby has given to Filmation the right to control distribution of these programs. Mr. Cosby has no ownership interest in Filmation. The show is available in the New York/ Scarsdale area over Television Station WNEW.

(c) *Possible Program with Mr. Robert Culp Entitled "Doyle"*. Mr. Cosby and Mr. Robert Culp have taken actions toward producing a program together, which Mr. Culp's company would produce and for which Mr. Cosby would be the Executive Producer. The script for the pilot program is in the process of being revised; once it has been revised, it is hopeful that the program will be taped. Thereafter, it is hoped that the pilot will be accepted by NBC to be run nationwide on a weekly basis in late or early 1986. The program would be produced in California. It is undecided whether Mr. Cosby would have an equity interest in that program.

(d) *Possible Program with Mr. Tony Orlando*. Last season, an episode of The Bill Cosby Show was designed to be a pilot for a spin-off program, of which Mr. Cosby and Mr. Tony Orlando would have been joint creators. Mr. Cosby would have been executive producer, and would have had a minority equity interest in the program, as well as a royalty interest. However, although the program is still under option to NBC, the pilot was not favorably received, and it is not currently expected that the show will get on the air.

(e) *Possible Program with Ms. Lena Horne*. Mr. Cosby and Carsee-Werner are discussing the possibility of a program, to star Ms. Lena Horne. It is hoped that the show would be broadcast nationwide on a weekly basis commencing in the Fall of 1986.

211. The parties also stipulated that Camille Cosby, spouse of Mr. Cosby, is 2% shareholder of Queen City Broadcasting of New York, Inc, applicant (FCC File No. BALCT-850916KG) to receive assignment of the license of Television Station WKBW, Buffalo, New York.

212. Mr. Zingale proposes to be integrated full-time a minimum of 40 hours per week) as General Manager. As general Manager, he will direct and assume ultimate responsibility for all aspects of day-to-day station operations, including business, sales, programming, operations and personnel. He will establish a residence in Scarsdale, which lies within the proposed service area (Cozzin ex. 2). Mr. Zingale lived in Scarsdale in 1964-1965). (*Id.*)

213. Mr. Zingale was employed full-time as an announcer at Radio Station WFOB, Fostoria, Ohio, from approximately 1952-1953. From 1955-1956, he was employed as an announcer and Account Executive at Radio Station WCOW in Minneapolis/St. Paul. In 1956, he was drafted into the U.S. Army. He was stationed at Ft. Monmouth, N.J., where he served at the military television station, primarily as director, news anchor and cameraman. Also during this period, he served at the Army Pictorial Center, where he did talent and public service spots.

214. During the period 1956-1960, Mr. Zingale was employed as Program Director and Account Executive at Radio Station WISK, in Minneapolis/St. Paul. He managed Radio Stations WFAS/WFAS(FM) in White Plains, New York, from 1964-65. In 1965, the Weschester Corporation purchased WDOK/WIXY(FM), Cleveland, Ohio. Mr. Zingale served as General Sales Manager of these stations from 1965-1970. During the period 1967-1970, he also served as General Sales Manager of Radio Station WINZ, Pittsburgh, Pennsylvania. Finally, during the period 1974-1980, Mr. Zingale held interests first in WWWE/WWWM(FM) in Cleveland and later in WBBG in Cleveland. He participated in the management of these stations on an as-needed basis (Cozzin Ex. 2).

215. If successful in this proceeding, Cozzin will install such auxiliary power generating facilities as necessary to permit the proposed stations to remain on the air in the absence of power from traditional sources (Cozzin Ex. 1).

Section 307 (b) Issue

216. All of the applicants specify the transmitter/antenna sites and facilities currently used by RKO for WOR(AM) and WRKS-FM. Accordingly, the areas and populations to be served by the applicants are without decisional significance.

217. WOR is a Class I-B clear channel station operating on 710 kHz with 50 kilowatts power and for unlimited hours. As a Class I station, WOR is a dominant station on its clear channel, rendering primary and secondary service over an extended area at relatively long distances (*Daylight Savings Time*, 44 FCC 2d 273, 276 (FCC 1973); 47 C.F.R. Section 73.21(a)).

218. WOR's 2 mV/m contour reaches south to Seaside Heights, New Jersey (in Ocean County), southwest to Philadelphia, west to Bethlehem, Pennsylvania, north to Newburgh, New York, northeast to Cape Cod, and covers Long Island to the east (Joint Ex. 2, Attachment C). The station's 0.5 mV/m contour extends beyond Atlantic City, Wilmington, Kingston, New Haven, Newport and the Cape.

219. Within WOR's 5 mV/m contour are the communities of license for 59 commercial AM and 44 commercial FM stations, 47 non-commercial television stations.

220. Competitive market forces operate on a region-wide basis in the Metropolitan New York Area. Thus, the radio and television stations in the area emanate coverage intended to reach as much of the Metropolitan New York Area advertising market as possible. For example, New York City's television stations place signals over all of Westchester County (where Scarsdale and Yonkers are located), half of New Jersey, and Southwestern Connecticut. Moreover, the broadcast coverage of television stations licensed to Secaucus, Linden, Newark, and Patterson, New Jersey, is very similar to the New York City stations (SJR Ex. 6, pp. 9-19; Joint 307(b) Ex. 2, p. 12). Of course, the coverage of WOR(AM) will be identical whether the community of licenese is New York City, Scarsdale, or Yonkers.

Metropolitan New York Area

221. Although comprised of separate communities, including New York City, Yonkers and Scarsdale, the Metropolitan New York Area functions as a single interdependent unit. The U.S. Census Bureau, Office of Management and Budget, and Department of Commerce all recognize the socio-economic interdependence of the area, including the interdependence of New York City, Yonkers and Scarsdale (Joint 307(b) Ex. 1, pp. 3-4). All three communities are part of the New York Primary Metropolitan Statistical Area (New York PMSA), which is in turn part of the New York-Northern New Jersey-Long Island (Consolidated Metropolitan Statistical Area (New York CMSA) (*Id.*, pp. 4-5).

222. The general concept underlying the definitions of metropolitan statistical areas is that of a "geographic area consisting of a large population nucleus together with adjacent communities having a high degree of economic and social integration with that nucleus" (*Id.*, p. 3). PMSA's "consist of a large urbanized county, or cluster of counties, that demonstrates very strong internal economic and social links, in addition to close ties to neighboring areas." The large area of which PMSA's are component parts is designated a CMSA (*Id.*)

223. Westchester County (including Yonkers and Scarsdale) is considered part of the same PMSA as New York City, reflecting the very high degree of economic and social integration of Yonkers and Scarsdale with New York City (*Id.*, pp. 3-4).

224. The New York PMSA contains Bronx, (the New York City borough of The Bronx), Kings (Brooklyn), New York (Manhattan), Putnam, Queens, Richmond (Staten Island), Rockland and Westchester Counties. Yonkers and Scarsdale are located in the more densely settled urbanized portion of Westchester County adjacent to New York City (*Id.*, pp. 5-20).

225. The New York PMSA is one of 12 PMSA's forming the New York CMSA. There are 14 "central cities" within the New York CMSA, including two (New York City and White Plains) within the New York PMSA (*Id.*, pp. 6-7).

226. The vast majority of metropolitan statistical areas have at least one central city of 50,000, usually the largest city. Smaller cities are also identified as "central cities" if they have a population of at least 25,000 *and* meet the following two commuting requirements. First, the city must have at least 75 jobs for each 100 residents who are employed. Second, no more than 60 percent of the city's resident workers may commute to jobs outside the city limits; in other words, at least 40 percent of the resident workers must be employed locally. Within the New York PMSA, New York City and White Plains (in Westchester County) are considered central cities, while neither Yonkers (which is immediately adjacent to the New York City borough of The Bronx) nor Scarsdale (approximately seven miles from New York City and approximately three miles from White Plains) is considered a central city (Joint 307(b) Ex. 1, p. 7).

227. The New York CMSA covers approximately 7,480 square miles. The SMSA had a combined population of 17,539,344 in 1980 and was the largest of 23 CMSA's in the United States. The CMSA population represented approximately 62.6 percent of the population of the 1980 tri-state (New York, New Jersey and Connecticut) population. The CMSA population represented approximately 7.7 percent of the 1980 United States population and was larger than that of every state except California and New York (*Id.*, pp. 4, 7-8).

228. The New York PMSA covers approximately 1,144 square miles and had a combined population of 8,274,961 in 1980. The population included the 7,071,030 residents of New York City. The New York PMSA represented approximately 47.1% of the population of New York State. The PMSA population was larger than the 1980 population of each of 42 states (*Id.*, pp. 6-8).

229. The New York PMSA experienced a one percent gain in population between 1980 and 1983. Between 1985 and 2000, it is expected that the PMSA population will increase by 1.7% to 8,433,000 (*Id.*, p. 8).

Regional Authorities and Organizations

230. The regional interdependence of the Metropolitan New York Area reflected in the definitions of the Consolidated and Primary Metropolitan Statistical Areas is further evidenced by a number of special authorities with region-wide jurisdiction.

231. The Port Authority of New York and New Jersey is an important example, providing port and airport and, increasingly, industrial area and economic base develop-

ment. The Port Authority headquarters are in the World Trade Center in lower Manhattan. The Port Authority is empowered to purchase, construct, lease, and operate terminal, transportation, and other facilities of commerce within the Port District, which includes New York City, Yonkers and Scarsdale. Projects are financed with the issuance of the Authority's own bonds. In 1978, New York and New Jersey authorized the undertaking of an industrial park development program to revitalize the inner cities of the Port District (*Id.*, p. 12). For example, the Port Authority recently acquired an Otis Elevator plant in Yonkers for redevelopment into an industrial park housing industries to manufacture rail cars for use on the Port Authority Trans-Hudson (PATH) commuter rapid-transit system between New York and New Jersey (*Id.*, p. 13; SJR Ex. 7, pp. 9-10).

232. The Port Authority operates Kennedy, LaGuardia and Newark Airports (Joint 307(b) Ex. 1, p. 12). Yonkers is only 30 minutes from LaGuardia Airport and one hour from Kennedy Airport (SJR Ex. 4, p. 6). All three airports are within one hour's drive of Scarsdale (Cozzin Ex. 3, p. 20). The Port Authority also operates the Port Authority Bus Terminal in Manhattan, the Holland and Lincoln Tunnels between New York and New Jersey, and the following bridges between New York and New Jersey: Bayonne, George Washington, Goethals, and the Outerbridge Crossing. The Port Authority operates marine terminals in New York and New Jersey and a rapid transit system between New Jersey and New York (Joint 307(b) Ex. 1, pp. 12-13).

233. The Port Authority issues an annual publication entitled *Regional Perspectives -- The Regional Economy*. In its publication, the Port Authority defines the New York-New Jersey Metropolitan Region as a 17-county region consisting of the five counties of New York City; the four suburban counties of Rockland, Westchester (including Yonkers and Scarsdale), Nassau and Suffolk in New York State; and the eight counties of northern New Jersey: Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union (*Id.*, p. 13).

234. Because of major concern with transit within the Metropolitan New York Area, a government organization with region-wide concern was developed, the New York Metropolitan Transportation Council (NYMTC) with offices in the World Trade Center. NYMTC is an organization of State and locally-elected officials and operators of public transportation facilities that is responsible for coordinating transportation planning in the ten-county area of Nassau, Putnam, Rockland, Suffolk, Weschester and the City of New York. Organized in 1982, NYMTC includes local governments of the Metropolitan Area, the State Department of Transportation and other State agencies coordinating transportation planning in the Metropolitan Area (*Id.*, pp. 13-14).

235. NYMTC publishes an information compendium (*Regional Transportation At a Glance)*, an annual *Regional Transportation Status* and *Metromonitor, A Regional Review of Social, Economic and Travel Trends (Metromonitor)*. Metromonitor is a statistical review of transportation and demographic trends in the New York metropolitan area, which is defined to include the five boroughs of New York City and seven suburban counties in southern New York State (including Westchester County), nine counties in northeastern New Jersey, and six planning regions in southwestern Connecticut. *Metromonitor* "reflects the close economic ties and common transportation problems of the metropolitan region" (*Id.*, p. 14).

236. Another special governmental authority with region-wide jurisdiction is the Metropolitan Transportation Authority of the State of New York (MTA), with headquarters on Madison Avenue in Manhattan. The MTA is composed of a Chairman and 13 Board members responsible for policy direction. Board members are appointed by the Governor of New York with the consent of the State Senate. The Chairman and five members, three of whom must be residents of New York City, are appointed by the Governor. Four members are appointed on recommendation of the Mayor of New York City. One member each is appointed on the recommendation of the County Executives of Nassau, Suffolk and Westchester Counties. The other member is appointed from recommendations of the Chief Executive Officers of Rockland, Dutchess, Putnam, and Orange Counties. MTA is the parent organization for the New York City Transit Operating Authority and the Manhattan and Bronx Surface Transit Operating Authority. These Authorities provide subway and bus service in New York City (*Id.*, pp. 14-15).

237. MTA is also the parent organization for the Staten Island Rapid Transit Operating Authority (SIRTOA), The Long Island Rail Road Company (LIRR) and the Metro-North Commuter Rail Division (Metro-North). SIRTOA was created to operate the Staten Island Rapid Transit System. LIRR provides commuter and freight transportation services within the Counties of Nassau and Suffolk and between those counties and New York City. Metro-North operates the Harlem, Hudson, and New Haven commuter rail lines in Westchester, Rockland, Dutchess, Putnam and Orange Counties in New York and in southwestern Connecticut. These lines converge on Grand Central Terminal in Manhattan (*Id.*, pp. 15-16

238. The Village of Scarsdale is only 35 minutes from mid-town Manhattan via the Metro-North (Cozzin Ex. 3, p. 19). The Conrail System provides commuters from Yonkers with regular transportation to and from New York City (SJR Ex. 4, p. 6).

Political and Judicial Districts

239. U.S. Congressional and Judicial Districts and New York State Assembly, Senatorial and Judicial Districts cross formal civil subdivision boundaries in the Metropolitan New York Area. Of the 34 U.S. Congressional Districts in New York State, 20 (1st through 20th) are wholly within the New York CMSA and 16 (6th through 20th) are wholly within the New York PMSA. Roughly two-thirds of Yonkers, together with a portion of The Bronx, is included in the 19th Congressional District, represented by Congressman Mario Biaggi. In Congressman Biaggi's district, the demographic characteristics of the portion of Yonkers are relatively indistinguishable from those of the portion of The Bronx (New York City) in the district (*Id.*, pp. 18-19).

240. Manhattan, The Bronx, Yonkers and Scarsdale are all located within the jurisdiction of the U.S. District Court for the Southern District of New York. The other New York City boroughs and Long Island are located within the jurisdiction of the U.S. District Court for the Eastern District of New York (*Id.*, p. 19).

Transportation Patterns

241. Much of the Metropolitan New York Area's employment and transportation is focused on the lower half of Manhattan. This central business district is the employment capital of the Region and the financial business center for the nation and the world. As a result, there is intense demand for travel to, from and within this small area (*Id.*, pp. 232-34).

242. Commuting patterns shown in an NYMTC study based on the 1980 Census demonstrate the high degree of economic interdependence that exists between New York City and Westchester County, and the inter-dependence among all of the counties in the New York-New Jersey-Connecticut region. For example, 108,299 workers from Westchester County (27 percent of all workers in the County, which includes Yonkers and Scarsdale) commuted to work in New York City, while 32,817 workers from New York City commuted to work in Westchester County. Among the 108,299 Westchester County residents commuting to work in New York City, 6,310 took the subway and 733 walked from Westchester to New York City. Of the 22 counties other than New York City's included in the NYMTC study, only one – Nassau County on Long Island – had more residents who commuted into New York City in either absolute or percentage terms (*Id.*, pp. 25-26).

243. Other indicia of economic interdependence can be found in commuting patterns. For example, 428,539 workers from the New York suburbs, 201,996 workers from northern New Jersey, and 25,086 workers from southwestern Connecticut commuted to work in New York City (*Id.*).

244. Many New York City residents commuted to work in the New York suburbs (100,594 workers), northern New Jersey (628,850) and southwestern Connecticut (4,109). Residents of the New York suburbs commuted to work in northern New Jersey (28,369) and southwestern Connecticut (15,174). New Jersey residents commuted to work in the New York suburbs (12,750) and southwestern Connecticut (1,741). Residents of southwestern Connecticut commuted to work in the New York suburbs (14,796) and northern New Jersey (1,413) (*Id.*, pp. 26-27).

245. Another important element of travel occurs on the New York Metropolitan Area's airways. The three major airports (Kennedy, LaGuardia and Newark) operated by the Port Authority continue to be the center of commercial aviation in the United States. Total annual flights to and from these airports rose sharply in 1982 to 897,000 carrying 64.1 million passengers, the highest totals ever recorded in the Area. Since deregulation, small airports in the region, on Long Island, in New Jersey and in Westchester County are playing some role in helping to deal with increasing regional airport traffic. By far the greatest growth is at Newark International Airport. From this airport, there is an increasing amount of ground transportation to New York City and other parts of the Area (*Id.*, p. 25).

246. New York City is home to both major stock exchanges and all 20 of the largest investment banks and brokerage houses are based in the City. Also, based in the City are 3 of the 5 largest insurance companies, 4 of the top 50 utilities, 6 of the top 50 retailing companies, 6 of the "Big 8" accounting firms, the 10 largest advertising agencies, and most of the nation's largest law firms. In all, there are approximately 12,000 law firms in the City (*Id.*, p. 34). Moreover, 93 of the world's largest banks now have offices in New York City. As a result, New York has become the center for international finance and other international corporate activity (*Id.*, pp. 33-34).

247. Four industries have fueled New York City's economic recovery since 1977: banking, securities, business services and communications. They accounted for 60 percent of the jobs gained and stimulated sufficient growth in construction, printing and publishing, hotels, and the arts to produce 12 percent more jobs in those industries. The economic interdependence of New York City and its suburbs is demonstrated by the fact that while there was an overall gain of 162,400 jobs in the City between 1977 and 1982, the number of City residents employed increased by only 45,000. Thus, over 117,000 new jobs in New York City were filled by residents of surrounding areas (*Id.*, pp. 34-35).

Professional Sports

248. Another example of private sector regional interaction is in the area of professional sports. The New York Mets, Yankees, Giants, Jets, Knicks, Rangers and Islanders, as well as the New Jersey Devils and Nets all seek to draw fans in person, and via the media, from the entire region. The Mets and Islanders play their games on Long Island. The Yankees play in The Bronx. The Knicks and Rangers play in Manhattan, while the Giants, Jets, Devils and Nets play their games at the Meadowlands Sports Complex in East Rutherford, New Jersey (*Id.*, pp. 18, 31).

New York City

249. The major concentration of activity in the Metropolitan New York Area is located in New York City. The City consists of five boroughs (city designations) that are the geographical equivalents of the five counties (state designations) in the City:

Boroughs	Counties
Manhattan	New York
The Bronx	Bronx
Brooklyn	Kings
Queens	Queens
Staten Island	Richmond

(*Id.*, pp. 9, 20).

250. The City's 1983 population was 7,151,000, an increase of 1.1 percent since 1980. By 1984, the City population had grown to 7,164,742 (SJR Ex. 9, p. 3). New York City covers 303.7 square miles and contains 6,601.9 miles of streets and roads. The assessed valuation of taxable real estate in the City was48,382,099,158 in Fiscal Year 1984-85. The City Budget in Fiscal Year 1985 was 18,730,928.741, and New York City purchases over1 billion in goods and services annually from vendors. Of the 7.4 million members of the Metropolitan New York Area civilian labor force, 3.0 million were located in New York City. Also, New York City had 42 percent of the Area's total personal income and 48 percent of the total wage and salary employees in the Area (Joint 307(b) Ex. 1, pp. 19-20).

251. The major elected officials in New York City are the Mayor, the Comptroller, the President of the City Council, and the Presidents of the five boroughs. The Mayor is the Chief Executive Officer of the City and oversees the administration of the City's governmental agencies. The President of the City Council is the City

Ombudsman and oversees city-wide citizen information and complaint programs. The City Council has 35 members and is vested with the legislative powers of the City with the sole power to adopt local laws (*Id.*, pp. 9-10).

252. City budget-making responsibilities are divided among the Mayor, City Council, and the Board of Estimates. The City Board of Estimates consists of the Mayor, the City Council President, and Controller (each with two votes), and the five borough Presidents (one vote each) (*Id.*, p. 10).

253. Responsibility for the City's electoral process is exercised by the Board of Elections. The electoral system in New York City is the second largest in the nation, serving 3.1 million registered voters in 1,300 polling places. About 7,000 voting machines are used in nearly 5,000 election districts (*Id.*)

254. The seven-member New York City Board of Education oversees the City's public school system, which serves 931,768 students through high school, plus an increasing adjust population. The system is comprised of 32 community school districts, each of which administers the elementary, intermediate and junior high schools within its boundaries. High schools and special education schools and programs are administered centrally. During the 1984-85 school year, there were 623 elementary schools, 179 intermediate/junior high schools, 111 high schools and 55 special education schools. There were 58,672 teachers, 2,791 principals/assistant principals and 7,726 administrative personnel. The cost of operating the public school system for the 1984-85 school year was4,556 billion (*Id.*, pp. 10-11).

255. The City government operates the City University of New York system, including seven community colleges, nine four-year senior colleges, one technical college, one graduate school, a law school, and an affiliated medical school (*Id.*, p. 11).

256. Academic health centers in the City include New York University, New York Hospital-Cornell, Mount Sinai, and Columbia-Presbyterian medical centers in Manhattan; Montefiore Medical Center/Albert Einstein College of Medicine in the Bronx and SUNY Downstate in Brooklyn. New York City is a national center for biomedical research, with 150 hospitals and over 14 percent of the nation's medical personnel (*Id.*, p. 29).

257. New York City's extensive municipal health system is operated by the Health and Hospitals Corporation primarily for the low-income population. The municipal system is the largest public health and hospitals system of any city in the U.S. It includes 11 acute care hospitals, 4 long-term care facilities, 5 neighborhood family care centers, and about a dozen specialized treatment sites offering medical, mental health and substance abuse services. New York City also has special purpose hospitals operated by the Federal and state governments and by voluntary boards (including Veterans Administration hospitals) and over 33,000 practicing doctors and dentists (*Id.*, p. 31).

258. Health care, public and private, is the third largest employer in New York City:

Industry	1983 Employment
1. Government (excluding health)	420,900
2. Retail Trade	369,400
3. Health Care (private and government)	307,600
4. Business Services	247,800
5. Wholesale Trade	238,600
6. Banking	173,300
7. Social Services, Nonprofit Organizations	148,500
8. Apparel Manufacturing	119,900
9. Securities Brokers	110,100
10. Real Estate and Misc. Financial	97,700
11. Printing, Publishing	92,800
12. Communications	82,300

(*Id.*, p. 30).

259. Arts and cultural facilities located in New York City belong to the entire Metropolitan New York Area, the nation and the world. Major institutions in New York City to which the City contributes include the American Museum of Natural History, the New York Botanical Garden, Carnegie Hall, the Fashion Institute of Technology, the New York Hall of Science, the Metropolitan Museum of Modern Art, the New York Public Library, the Bronx Zoo, the New York Aquarium, the Museum of the City of New York, the New York Historical Society, Lincoln Center, and the New York, Brooklyn, and Queens Botanical Gardens. New York City's cultural resources draw visitors and students from throughout the Metropolitan New York Area. Resources such as the Lincoln Center, the museum of Modern Art, the Whitney, with regional division located throughout Metropolitan New York, and the many corporate art collections, from the Pepsico facility in Westchester to the IBM collection in Manhattan, all testify tot he cultural unity of the Area (*Id.*, pp. 31-32 and Attachment 13).

260. New York City is also Host City for the United Nations. The New York City Commission for the United Nations and for the Consular Corps acts as the official liaison between the Mayor and the members of the U.N. community. The Committee participates in policymaking with respect to the responsibilities of the United States and New York City as the Host Country and Host City to the world organization's headquarters. The Committee is also responsible for coordinating the Sister City Program (New York's sister cities are Beijing, Tokyo, Cairo, Madrid and Santa Domino). There are consulates for 88 different countries in New York City (*Id.*, pp. 38-39).

261. Including WOR(AM), there are 17 AM, 13 commercial FM, 9 non-commercial FM, and 7 television (5 commercial and 2 non-commercial) stations licensed to New York City (SJR Ex. 6, pp. 1-2, 7).

Scarsdale

262. Scarsdale is a conterminous Town and Village of 6.5 square miles located approximately 7 miles from New York City in Westchester County. Scarsdale's 1980 population was 17,650, representing an 8.2% decrease from the 1970 population of 19,299 (Cozzin Ex. 3, pp. 1-2, 9; Joint 307(b) Ex. 1, p. 7).

263. Incorporated in 1915, Scarsdale is two municipalities within one set of boundaries. The same officials act both as Village authorities, to administer local municipal affairs, and as Town authorities, to administer Town affairs as prescribed by State Law. Thus, the members of the

Village Board of Trustees also serve as members of the Town Board. The Village Board manages and controls the Village's finances and property, and has the authority to pass laws and ordinances not inconsistent with State Law. The Town government is responsible for functions such as the supervision of elections, assessment of land and buildings, and collection of state, county, and school taxes (Cozzin Ex. 3, p. 2).

264. The Village operates under a council-manager form of government. The Village Board of Trustees consists of the Mayor and six trustees. The Board appoints the Village Manager, who supervises all Village operations through appointed department heads (*Id.*, p. 3). The Town is governed by the Village officers. In addition to a Village Justice Court, the Village and Town have executive offices and departments dealing with taxes, law, parks, recreation and conservation, personnel, purchasing, fire and police protection, and public works (*Id.*, pp. 3-4).

265. In addition, the Board appoints four boards with independent policymaking authority and eight standing councils in advisory capacities. The Board also appoints, as necessary, ad hoc and standing citizens' committees to investigate special problems. The Village is served by a Village Historian (*Id.*, pp. 4-5).

266. The Village relies almost entirely on residential properties for its tax base. In 1983-84, the Village operating budget was17.8 million; in 1985-86, the operating budget is 18.3 million. The greatest single expenditure is for public safety, with highway department costs, public employee benefits and waste collection as other major expenses.

267. The Scarsdale zoning code restricts commercial and industrial business. Consequently, there are no manufacturing or industrial companies within the Village of Scarsdale. Scarsdale is primarily a residential community consisting almost exclusively of single family, detached homes with some multi-level apartment buildings. There are approximately 5,4000 occupied housing units currently in Scarsdale, and several residential subdivisions are under construction. There were 201 building permits issued in 1984-85 for alterations and additions to existing housing units for a new construction value of5.9 million. Inhabitants are served by a quaint commercial area in the center of the Village near the railroad station (*Id.*, pp. 6, 11; Attachment D, p. 2).

268. Over 90 firms conduct business in Scarsdale, predominantly in retail sales and services, and there are approximately 65 business and commercial buildings within the Village (*Id.*, pp. 6-7).

269. There are 12,859 employed persons age 16 years and older in Scarsdale. The average per capita income in Scarsdale was 25,016 in 1984, and the average household income was79,595. This compares to Westchester County's 1984 per capita income of 14,391, and average household income of39,617 (*Id.*, pp. 9-10).

270. Scarsdale owns 227 acres of land, of which approximately 167 acres are parklands. The Village of Scarsdale Parks, Recreation, and Conservation Department is responsible for 100 programs areas, including a municipal swimming pool complex, tennis courts, paddle tennis courts, playing fields, and neighborhood parks. There are a variety of year-round leisure-time activities for adults and children. The Village also has public golf, tennis, and riding clubs, as well as nature trails and a nature museum (*Id.*, pp. 11-12).

271. Cultural attractions in Scarsdale include the Wayside Cottage, built in the early 18th century and owned by the Village. The Scarsdale Historical Society is restoring the Cudner-Hyatt farmhouse and reconstructed the Quaker Meeting House (*Id.*, p. 13).

272. The Scarsdale Art Center is a non-profit art school, and the Dance-In Education Fund is a non-profit organization that promotes dance. The Village also has summer band concerts, the Dance Workshop, and the Scarsdale Summer Music Theater, as well as The County Center and the Plaza Cinema (*Id.*, pp. 13-14).

273. Scarsdale does not have its own school system, but is served by the Scarsdale Union Free School District, an independent public corporation that serves a portion of Mamaroneck, New York, as well. The District includes a high school, a junior high school, and five elementary schools. The 1984-85 enrollment was 3,963. An additional 471 students attend the two parochial schools in the Village (*Id.*, p. 14).

274. Scarsdale is a member of the Board of Cooperative Educational Services--Southern Westchester BOCES--which provides special classes and services for handicapped children. Scarsdale also has a non-profit adult school operated by volunteers, and Westchester Community College at Valhalla serves many Scarsdale students (*Id.*, pp. 14-15).

275. The Scarsdale Public Library houses 112,235 volumes, as well as a large collection of newspapers and periodicals. The library sponsors activities and programs for adults and children, and is a member of the Westchester Library System (*Id.*, p. 15).

276. The Scarsdale Medical Center provides a wide range of medical professionals to serve the community. The Scarsdale Family Counseling Service provides family therapy, clinical services, family life education programs, and outreach programs. Scarsdale has no hospitals, but three are located in nearby areas of Westchester County. The Scarsdale Volunteer Ambulance Corps serves Scarsdale 24 hours a day (*Id.*, p. 16).

277. There are 15 places of worship in Scarsdale, plus 63 clubs and organizations. In addition, there are 16 Neighborhood Associations, plus a Confederation of Scarsdale Neighborhood Associations, organized to facilitate communication among the associations, to address and promote cooperation toward resolution of common problems (*Id.*, p. 16-19).

278. The *Scarsdale Inquirer* is published weekly. The *Reporter Daily* is a Westchester paper that covers Scarsdale. The Village government periodically publishes *Village Report*. *Insight* is a monthly publication of the Board of Education. No broadcast stations are licensed to Scarsdale, but Scarsdale is served by a cable system operated by UA-Columbia Cablevision of Westchester, Inc. (Cozzin Ex. 3, Attachment B, p. 79). System operations are monitored by Scarsdale's Advisory Council on Cable Television, and Scarsdale has an evolving community access program. Scarsdale's cable coordinator assisted numerous community organizations such as the Volunteer Fire Department, the United Way, and the Drug and Alcohol Task force in producing programs that aired on Cable Channel 8. Programming from the Village Hall is also cablecast on Scarsdale Government Access Channel 35 (*Id.*).

279. Scarsdale is 35 minutes from midtown Manhattan via the MTA's Metro North commuter railroad. Westchester Street Transportation, which provides service

throughout Westchester County, provides bus service in Scarsdale. The Hutchinson River Parkway and Bronx River Parkway are major north-south access routes from Scarsdale to New York City. Westchester Airport is located in nearby Harrison (*Id.*, pp. 19-20, Attachment B, p. 10, and Attachment D. p. 2).

Yonkers

280. Yonkers is the largest city in Westchester County and is the fourth largest city in New York State (SJR Ex. No. 7. p. 4). It is bounded on the west by the Hudson River, on the east by the Bronx River Parkway, on the north by the towns of Hastings-On-The- Hudson and Greenburgh and on the south by New York City (SJR Ex. No. 4, p. 2).

281. The City of Yonkers operates under a council Manager form of local government. The City Council is composed of the Mayor, elected by the city-at-large, and six councilmen, four elected from districts and two elected by the city-at-large.

282. Among the departments and agencies that comprise the city government and provide services to the citizens of Yonkers are the following:

a. Police
b. Fire Department
c. Department of Planning and Community Development
d. Parks, Recreation and Conservation Department
e. Personnel Office
f. Engineering Department
g. Purchasing Department
h. Comptroller's Office
i. Consumer Protection Office
j. Fair Housing Office
k. Office of the Aging
l. Parking Authority
m. Veterans Services Agency
n. Youth Services Agency
o. Board of Education

283. The Yonkers City Budget adopted for the year 1984-85 totalled258.1 million dollars. Actual figures as of March 31, 1985, put the City Budget at269.9 million dollars. The revenue side of the figure is comprised of227.9 million from the General Fund, including98.2 million in revenues from property taxes (43 percent). Some254.1 million of the revenues were allocated to City operating expenses, and15.8 million of the revenues were expended on debt servicing.

284. There are approximately 1,800 businesses with offices and/or establishments located in the City of Yonkers.

285. The City of Yonkers recently forged, out of three separate city agencies, a new Department of Planning and Community Development. Working with the Yonkers Chamber of Commerce, this Department will spearhead the city's aggressive efforts to spur economic and community development. In 1984-85, the Yonkers Department of Planning and Community Development launched nine major economic development program areas:

Urban Development Action Grants
The Commercial Facade Program
Housing Residential Rehabilitation
The Yonkers Apartment Improvement Program
The Waterfront Project
The Yonkers Small Business Loan Program
The Rental Assistance Program
The Community Project Technical Assistance Program

(SJR Ex. No. 7. p. 12).

286. Under these programs, a number of major projects have been undertaken which are designed to take advantage of the city's growth potential. Among the projects is development of the Yonkers Waterfront. Current city plans call for upgrading of the Yonkers Pier, conversion of existing buildings and development of waterfront parcels for mixed commercial-recreational use.

287. Other major development projects include the creation of the "Yonkers Industrial Park" out of the old Otis Elevator plant. The Park, a joint venture of the city of Yonkers and the Port Authority of New York and New Jersey, will house the PATH Rail Car Manufacturing plant of Kawasaki Industries.

288. A number of new executive centers and shopping plazas are also under development for the city of Yonkers. These include the Greenway Shoprite Plaza on Riverdale Avenue, a15 million project, the South Westchester Executive Park addition and the Austin Avenue Executive Park, a100 million 101-acre development that will include office space, a new 300-room hotel and the creation of a new public park (SJR Ex. No. 4, pp. 8-9; SJR Ex. No. 7, p. 11).

289. A number of smaller scale development projects have been undertaken by the city. These include the targeting of over 500,000 of development funds to certain commercial areas for refurbishing with new storefronts, signs, awnings and building design enhancement work. Housing rehabilitation undertaken by the city has included the refurbishing of 15 owner-occupied single family homes with city-backed loans and the construction of the new Willow Street Complex, a 55-unit senior citizen housing project (SJR Ex. No. 9, p. 13).

290. Yonkers had a 1980 U.S. Census population of 195,351 persons. According to the Census, some 164,359 residents of Yonkers are white, 20,503 are black, and 16,924 count themselves as of Hispanic origin (SJR Ex. No. 4, p. 4). Some 2,947 Yonkers residents reported themselves to be of Asian/Pacific Islander heritage (SJR Ex. No. 5, pp. 5, 11).

291. The 1980 U.S. Census placed the Yonkers City labor force at 95,835 persons (*Id. at 16). Of those persons employed, 1980 statistics reflected that 30.6 percent (29,312) are employed in service occupations, 21.8 percent (17,391) in manufacturing and 20 percent (19,110) in wholesale and retail trade (Id.* at 17). Some 5.6 percent (5,327) are un-

employed *Id.* at 16). The mean income for Yonkers families in 1979 was25,405. The mean income for individuals over 15 years of age was11,000 (*Id.* at 18).

292. Population growth in Yonkers increased from 1960 to 1970, from 190,634 persons to 204,297 persons. The population declined by 1980, however, to 195,351 persons (*Id.* at 3).

293. The Yonkers City Bureau of Parks, Recreation and Conservation sponsors a diversified program of social, cultural, creative and athletic activities year round for the residents of the city. It also operates swimming pools for the summer enjoyment of Yonkers residents and a skating rink for ice activities. Among the main cultural attractions of Yonkers are the Hudson River Museum and Andrus Planetarium, the Philipse Manor Hall and the historic Sherwood House. In addition, the Yonkers Public Library regularly sponsors a variety of educational, cultural and instructional programs (SJR Ex. No. 4).

294. There are 5 high school, 21 elementary schools and 4 middle schools operated by the City of Yonkers. In addition, there are some 29 private and parochial schools in Yonkers. Yonkers is also home to two colleges, two seminaries and one branch college (*Id.* at 5).

295. In addition to its book collection, the Yonkers Public Library sponsors a variety of regularly scheduled educational and cultural programs. In addition to the main Library, there are two branch libraries, Crestwood and Will, located in Yonkers (*Id.*).

296. There are some 74 places of worship in the Yonkers area, representing a number of the major faiths. Specifically, there are 20 Roman Catholic churches, 7 Synagogues, 43 churches serving various Protestant denominations, 3 Eastern Orthodox churches and 1 Greed Orthodox church. There are also two seminaries located in Yonkers, St. Joseph's Seminary and St. Vladimir's Orthodox Theological Seminary (*Id.*).

297. Among its print media, Yonkers counts the *Herald Statesman*, a daily newspaper published in the city. The *Home News & Times* is a weekly newspaper published and circulated in Yonkers every Thursday. The *Yonkers Jewish Chronicle* is published in Yonkers on a weekly basis. There are no radio or television stations licensed to Yonkers (SJR Ex. No. 4, pp. 5-6; SJR Ex. No. 6, p. 1). Cable Vision of Westchester is a cable television system located in Yonkers and serving Westchester County (NYC JT. Ex. 4).

298. Yonkers is traversed by several arteries, including the Henry Huson Parkway, the New York Thruway, the Bronx River Parkway and the Cross County Parkway. These roadways provide Yonkers' residents easy access to most destinations by car. The ConRail System provides the commuters of Yonkers with regular transport to New York City, in an approximate travel time of 28 minutes. Bus service in Yonkers, encompassing some 17 routes, is provided by the County of Westchester. The nearest airport to Yonkers is the Westchester County Airport which is reached by car from Yonkers in approximately 20 minutes. Yonkers is also located approximately one hour distant (by car) from Kennedy International Airport and one-half hour distant (by car) from New York's LaGuardia Airport (SJR Ex. NO. 4, p. 6). The 1980 U.S. Census reports that of the 88,051 workers aged 16 years and over, 59,520 persons use private vehicles to reach their place of employment, and 21,356 persons use public transportation. In reporting their travel time to work, the largest number of workers (25,278) reported that their travel time was between 10 to 19 minutes (SJR Ex. No. 5, p. 15).

III. CONCLUSIONS OF LAW

299. Freedom, Magna Media, S/G, and Women have applied for the WOR(AM) facilities by proposing to maintain the station's present community of license, New York City. The other two AM construction permit applicants have proposed communities of license other than New York City. Cozzin has specified Scarsdale, New York, as its community of license, and SJR has proposed Yonkers, New York, as its community of license.

300. As a result of the differing proposed communities of license, the Commission designated a Section 307(b) issue to determine which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

301. All the applicants in this proceeding propose to retain the existing transmission facilities of WOR(AM). As a result, the areas and populations aspects of the Section 307(b) issue have no decisional significance. The only remaining question under the Section 307(b) issue is whether SJR or Cozzin is entitled to a decisional preference for proposing a community of license other than New York City.

302. In *Huntington Park Broadcasting Co.*, 14 FCC 563, 5 RR 721 (FCC 1950), *aff' d sub nom. Huntington Broadcasting Co.* v. *FCC*, 192 F 2d 33 (D.C. Cir. 1951), the Commission refused to grant a Section 307(b) preference to an applicant for a 5 kw daytime-only AM facility that would provide a first local service for Huntington Park, a suburb of Los Angeles, over another applicant for an almost identical facility that would be licensed to Los Angeles. The Commission noted that Huntington Park had an "individual identity as a separately incorporated city with its own civic, educational and governmental organizations," but nonetheless found that it was an integral part of the Los Angeles community for Section 307(b) purposes, 14 FCC at 583, 5 RR at 743.

303. The case has become known for the *Huntington* doctrine, which holds that where a suburban applicant proposes a high-powered frequency covering a central city, that applicant should have no determinative Section 307(b) advantage over other applicants in the urban area. *Beaufort County Broadcasting Company*, 787 F 2d 645 (D.C. Cir. 1986). The *Beaufort County* Court identified *Huntington's* premise: that "where integrally related communities constitute a single metropolitan transmission service area, individual communities' needs should be presumed satisfied by the aggregate of stations in that area," 787 F 2d at 649, *citing Huntington*, 14 FCC at 584.

304. When an applicant (such as Cozzin or SJR) has designated as its proposed community of license a suburban community (such as Scarsdale or Yonkers) integrally a part of a larger metropolitan area (such as the Metropolitan New York Area) and that applicant has sought a license authorizing enough power to cover the wider area (such as WOR(AM)'s 50 kw clear channel regional facilities), *Huntington* requires the Commission to disregard "the corporate limits of the . . . city named in the applications and to treat the proposed community as encompassing the entire metropolitan area," 787 F 2d 652.

Therefore, no single community within the integrated metropolitan area is eligible to receive a Section 307(b) preference when the *Huntington* doctrine applies.

305. The Commission's Review Board has explained that the key factors under the *Huntington* doctrine are the:

(1) power and class of station;

(2) independence or interdependence of specified "community" to central city of "urbanized area;"

(3) size and proximity of specified "community" to central city of "urbanized area;" and

(4) signal population coverage and relevant advertising market.

(*Debra D. Carrigan*, 100 FCC 2d 721).

306. To award a Section 307(b) preference to either Cozzin or SJR would be contrary to each of the *Huntington* criteria.

Power and Class of Station

307. WOR is a Class I-B clear channel station operating on 710 kHz with 50 kw power for unlimited hours. WOR is a dominant station on its clear channel, rendering primary and secondary service at relatively long distances. *Daylight Savings Time*, 44 FCC 2d 273, 276 (FCC 1973); 47 CFR Section 73.21(a).

308. WOR's city-grade (5 mV/m) contour covers all of, and extends well beyond, New York City, Scarsdale, and Yonkers. The station's primary service (2 mV/m) contour covers the entire Metropolitan New York Area and extends from Philadelphia to Cape Cod. There can be no question that WOR is a regional facility. Clearly, WOR's facilities (common to all of the applicants' proposals) provide the wide-area coverage common to *Huntington* doctrine cases.

Interdependence of New York City, Scarsdale, and Yonkers

309. While Scarsdale and Yonkers are distinct communities, their interdependence with, and dependence on, New York City are indisputable. All three communities are part of the highly integrated metropolitan urbanized area centered around New York City.

310. New York City is the dominant central city of the populous New York PMSA. Scarsdale and Yonkers have a high degree of economic and social integration with the city and the PMSA demonstrates strong internal economic and social links. The PMSA is also part of the largest CMSA in the country -- covering New York, northern New Jersey, and Long Island.

311. The interdependence of the communities is further reflected in their inclusion within the jurisdiction of regional authorities and organizations such as the Port Authority, the NYMTC, the MTA, and the Regional Plan Association.

312. The region's employment and transportation are focused largely on the central business district in New York City's Manhattan borough. Commuting patterns highlight Scarsdale's and Yonkers' dependence on New York City. Of Westchester County's workers, over 27% commute to work in New York City. Scarsdsale is a classic "bedroom community." Its zoning code severely restricts commercial and industrial businesses. As a residential community only 35 minutes from midtown Manhattan by commuter railroad, Scarsdale has shown an active interest in maintaining a dependable mass transit system to serve residents commuting to New York City. Yonkers is more urbanized than Scarsdale, but it has either fewer than 75 jobs per 100 residents who are employed, or over 60% of its workers commute to jobs outside Yonkers.

313. New York City is home to both major stock exchanges, the 20 largest investment banks and brokerage houses, 6 of the "Big 8" accounting firms, the 10 largest advertising agencies, and approximately 12,000 law firms.

314. Another example of private sector regional interaction is in the area of professional sports. Of course, arts and cultural facilities located in New York City belong to the entire Metropolitan New York Area, the nation, and the world.

315. Certainly Scarsdale and Yonkers depend on New York City and the regional community for services, cultural activities and jobs.

Size and Proximity of Scarsdale and Yonkers to New York City

316. Yonkers (1980 population: 195,351) is immediately adjacent to New York City. Scarsdale (1980 population: 17,650) is located approximately 7 miles from New York City. New York City (1980 population: 7,071,030) dwarfs its neighbors and is still growing. The city covers 303.7 miles and had a 1985 budget in excess of18 billion. New York City had 42% of the Metropolitan New York Area's total personal income and 48% of the Area's employees. All three communities are part of the urbanized New York PMSA. The PMSA's 1980 population represented 47.1% of New York State's population and was larger than the population of 42 states.

317. The location of Yonkers and Scarsdale close to the boundary of vastly larger New York City and their location within the New York PMSA and CMSA preclude a Section 307(b) preference.

Signal Population Coverage and Relevant Advertising Market

318. This final *Huntington* factor likewise precludes the award of a Section 307(b) award to Scarsdale or Yonkers. Cozzin and SJR, like the New York applicants, propose to maintain WOR's present transmission facilities, which provide coverage throughout the Metropolitan Area.

319. Competitive market forces operate on a region-wide basis in the Area. Accordingly, the radio and television stations in the Area emanate coverage to reach as much of the Area advertising market as possible. Since WOR is a regional and not local facility, Cozzin and SJR can hardly claim that they will limit their appeals to advertisers in Yonkers and Scarsdale. Rather, they would be competitors with many of the 59 commercial AM 44 commercial FM, and 13 commercial TV stations within WOR's city-grade contour.

320. These four *Huntington* factors all show that Scarsdale and Yonkers are integral parts of a metropolitan area centered around New York City. To reallocate WOR from New York City to either Scarsdale or Yonkers would not contribute to a "fair, efficient, and equitable distribution of radio service." It would simply exalt form over sub-

stance. Therefore, no Section 307(b) preference will be awarded, and all of the applicants will be compared under the contingent standard comparative issue.

B. *Contingent Comparative Issue*

Magna Media Corporation

321. Magna Media claims 86.6% full-time integration credit and 13.4% part-time integration credit. However, the integration proposal of Mr. Mario Baeza cannot be credited. Mr. Baeza owns 13.4% of Magna Media's stock. He proposes to work 40 hours per week at the Magna Media stations as co-director of public affairs and community relations.

322. Mr. Baeza does not intend to reduce his activities at Debevoise & Plimpton, and those activities consume an average of 44.5-46.8 hours per week, and a maximum of at least 57.3 hours in week.[4] Thus, Mr. Baeza's proposed workweek between Magna Media and Deveboise & Plimpton is 97.3 hours. Such proposal is inherently unbelievable. *Caldwell Broadcasting Corp.*, 100 FCC 2d 115, 125 (While we cannot say as a matter of law that 60-hour work weeks are incapable of effectuation, . . . none of the cited cases endorses an 80-hour proposal, and we decline to do so.); *Flint Family Radio*, 69 FCC 2d 38, 41 (Rev. Bd. 1977) (simply unreasonable to expect . . in excess of 70 hours per week."

323. Magna Media is entitled to 73.2% full-time (40 hours per week) and 13.4% part-time (25 hours per week) credit for the integration of ownership into management. This integration is qualitatively enhanced. All of Media Media's integrated principals are racial minorities and New York City residents. Additionally, Magna Media is owned 13.4% by females. Finally, each of the integrated principals has extensive involvement in civic activities. Magna Media is entitled to a slight credit enhancement for proposing auxiliary power equipment.

324. Magna Media and its principals have no other media interests.

Freedom and People Broadcasting Corporations

325. Robert Price does not own any shares of Freedom or People directly. Mr. Price does own between 8 and 9% of Price Communications. Because Republic is a wholly owned subsidiary of Price Communications, the shareholders of Price Communications are considered the owners Republics' shares in Freedom and People. Because Mr. Price owns between 8 and 9% of Republic, he will be considered the 8-9% owner of Freedom and People for integration purposes.

326. The claim that Mr. Price should be considered the 51% owner of Freedom and People for integration purposes is unsupportable. This claim is based on Mr. Price's alleged authority--which if it exists at all, is revocable by the Board of Directors at any time--to vote 510 of the 900 shares (90%) in Freedom and People owned by Republic (and, in situations requiring more than a simple majority, to vote the remainder of those 900 shares as well).

327. Mr. Price appears to have appropriated this claimed voting authority without the approval of the Board of Directors of either Republic or Price Communications, and to have accomplished ratification of this action in August 1985, more than a year after the "B" cut-off date, and some 5 months after Freedom and People filed their integration proposals. The August 1885 "ratification" is impermissible post "B" cut-off upgrading. In addition, all of Mr. Price's voting authority is revocable, because he exercises it in his capacity as president of Republic. Thus, Mr. Price did not have actual authority to vote 51% (or more) of the stock in Freedom and People on the revelant cut-off date; his claim of 51% integration credit fails.

328. Ponchitta Pierce has at most a 7% ownership interest in Freedom and People, even though she claims 46% integration credit. She owns 7% of the stock of Freedom and People. She votes those shares at all times. In situations requiring a simple majority for corporate action, she claims authority to vote another 39% for a total of 46%, of the stock of Freedom and People. Ms. Pierce's alleged voting rights in that extra 39% are meaningless, because she would only have the authority to exercise them in situations in which her voting power is too small to effect corporate action; she has no effective voting authority beyond the 7% interest that she owns. Ms. Pierce must at most be considered the 7% owner of Freedom and People for integration purposes.

329. Freedom and People claim entitlement to an additional 3% residual integration credit based on Rachel Robinson's commitment. Although she is a member of a minority group, Ms. Robinson has not made a definite enough commitment to the stations to warrant residual credit. She claims that she will offer advice to the officers and directors of Freedom and People regarding the needs of minority communities, yet she does not make a definite time commitment. The Commission has in the past granted residual minority credit only when a minority shareholder makes a definite time commitment to the station. *See* , e.g., *Midwest Broadcasting Co.*, 70 FCC 2d 1489, 1495 n. 10, 1496 n. 14 (Rev. Bd. 1979) (4-8 hour commitment credited); *Alexander S. Klein, Jr.*, 69 FCC 2d 2134, 2146-47 (Rev. Bd. 1978) (commitment of 1 hour per day credited); *Peoples Broadcasting Corp.*, 92 FCC 2d 1303, 1327 (Rev. Bd. 1983) (commitment to attend Board of Directors meetings credited).

330. Freedom and People are entitled to 15-16% quantitative full-time integration credit for the proposals of Mr. Price and Ms. Pierce. Those integration proposals are qualitatively enhanced by virtue of the local residence of both of those principals; Ms. Pierce receives civic participation enhancement, and so does Mr. Price. Ms. Pierce and Mr. Price both receive enhancement credit for prior broadcasting experience. Ms. Pierce receives minority enhancement credit because she is black, and also because she is a female.

331. Freedom and People receive a substantial diversification demerit owing to the other mass media interests of Price Communications, Inc. Price Communications is the parent company of Republic, a 900-share stockholder (90%) in both Freedom and People. Price holds either directly or through subsidiaries, some 17 broadcast licenses in cities across the United States, and also has newspaper interests in Red Bank and Toms River, New Jersey. Red Bank is within the 5 mV/m contour of WOR(AM) and 1.0 mV/m contour or WRKS-FM, and Toms River is within the 2 mV/m contour WOR(AM). Also, Ponchitta Pierce, a 7% stockholder, is a co-producer and host of public affairs program aired regularly on WNBC-TV, New York, New York. Owing to the numerous other media holdings as set forth above, the location of some within the service area of Freedom and People, and the regular broadcast of programming within the service area produced by a Free-

dom and People principal, those applicants must be assessed a substantial diversification demerit. *Golden State Broadcasting Corp.*, 94 FCC 2d 212, 214, 57 RR 2d 348, 351 (Rev. Bd. 1983). Freedom and People receive a slight preference for their proposal to have auxiliary power available at their studios and transmitter sites.

South Jersey Radio

332. South Jersey has proposed no integration of ownership into station management.

333. South Jersey controls several media located in New Jersey. These include WMGM-TV in Wildwood, WMGM(FM) in Atlantic City, WOND(AM) in Pleasantville, New Jersey, and the *Sentinel Ledger*, a weekly newspaper published at Ocean City-Somers Point, New Jersey. South Jersey potentially reaches 204,600 TV households, over 470,000 radio listeners, and over 10,000 newspaper households through these media.

334. South Jersey's owners also wholly own WENY, Inc., licensee of WENY(AM), WLEZ(FM), and WENY-TV, all located at Elmira, New York. Through WENY, Inc., they also control two television translator stations, WO6AR at Hornell, New York, and WO7BJ at Ithaca, New York. Finally, through WENY, Inc., they control WKAL(AM) and WTCO(FM), both at Rome, New York. South Jersey and its principals have significant interest in numerous media in New Jersey and New York. These media interests place South Jersey at a substantial diversification disadvantage.

335. South Jersey is entitled to a slight preference for its auxiliary power proposal.

Women Owning Radio

336. According to Women's corporate documents, the holders of Class B common stock have no voting rights excepting matters regarding the FCC application and extroordinary corporate matters such as dissolution, recapitalization, and the like. The Class B shareholders have no voting rights with respect to the election of directors, or the policies and practices in the ordinary business of the corporation. The Class B shareholders may not be employees of the corporation, nor may they be active in the day-to-day operation of the corporation. Women's articles, its by-laws, and the shareholder agreement are patterned after corporate documents dealt with in *Cleveland Television Corp.*, 91 FF 2d 1129, 52 RR 2d 581 (Rev. Bd. 1982), *rev. den' d.*, FCC 83-235, *affm' d.*, *Cleveland Televisison Corp.* v. *FCC*, 732 F2d 962 (D.C. Circuit 1984).

337. Between May 1983, when Women was incorporated, and February 1985, Womens' principals met approximately 17 times and all of the shareholders, whether voting or non-voting, were invited to attend virtually all of these meetings. The Class B shareholders actively participated in the meetings that they attended. This participation, however, seems to have been devoted largely to matters concerning the continued prosecution of Women's application. These activities of Women's non-voting shareholders provide no basis for inferring that those shareholders will exercise influence or control over the operation of an ongoing radio station. *Cleveland Television*, *supra* ; *Victory Media, Inc.*, FCC 88-134, released April 12, 1988.

338. Women is entitled to 100% quantitative integration credit for its proposal to integrate, on a full-time basis, its six voting shareholders into station management.

339. The integration proposal is substantially enhanced by virtue of the fact that each of the integrated principals is a female, and also, by the local residence of each of those principals. Additional enhancement is awarded because four of the six integrated stockholders are members of racial minority groups. Further significant enhancement is awarded for the civic involvement of each of the integrated principals. The proposal is enhanced to a minor degree by the broadcast experience of Women's principals, and slight enhancement is awarded for Women's proposal to use auxiliary power.

340. Neither Women, nor any of its shareholders, has any attributable interest in any medium of mass communications.

S/G Communications

341. S/G's Limited Partnership Agreement was entered into on May 10, 1983, shortly before its application was filed with the Commission on May 12, 1983. In *Daytona Broadcasting Co., Inc.*, the Commission extended the principles set out in *Ownership Attribution*, 58 RR 2d 604 (1985) to comparative broadcast licensing proceedings. *See* also, *Independent Masters, Ltd.*, 104 FCC 2d 178, 186-187 (Rev. Bd. 1986). To assure the absolute passivity required for nonattribution of a limited partner's equity interest, *Ownership Attribution* now requires that the written limited partnership agreement itself contain, among other things, specific provisions prohibiting the limited partners from being involved in any material respect in the management or operation of the broadcast entity concerned.

342. S/G's Limited Partnership Agreement does not contain the *specific* insulative "no material involvement" provisions now required by *Ownership Attribution*. After all, those *specific* provisions did not become mandatory in comparative broadcast licensing proceedings until 1985. Nevertheless, the Review Board has explained that ". . .the operative and critical concept here, as it has been from *Anax* [*Broadcasting Inc.*, 87 FCC 2d 483 (1981)] on down is the true and actual *passivity* of" the limited partner. *Magdalene Gunden Partnership*, FCC 87R-70, released February 1, 1988. S/G's Limited Partnership Agreement fully comports with that concept.

343. Section 14(a) of S/G's Partnership Agreement provides that limited partners "shall have no right to participate in the management or the conduct of the Partnership business and affairs nor any power to act for or on behalf of the Partnership in any respect whatsoever." Section 18 of the Partnership Agreement provides that limited partners "shall take no part in, nor interfere in any manner with, the conduct or control of the Partnership business . . . and shall have no right or authority to act for or bind the partnership." It is concluded that S/G's Partnership Agreement sufficiently precludes S/G's limited partner from being involved "in any material respect in the management or operation" of S/G's proposed broadcast stations.

344. S/G is entitled to 100 percent quantitative integration credit for its proposal to integrate its three general partners into station management. Mr. Squadron's integration credit is enhanced by his life-long local residency and extensive civic involvement. Mr. Gourdine's quantitative integration credit is enhanced by his long-time local residency, civic involvement and minority status. Mrs. Gourdine's integration is enhanced by her long-time local residency and civic involvement and her status as minority female. In sum, S/G receives 100 percent full-

time integration credit, with enhancements for local residency and civic involvement, female ownership, and racial minority ownership.

345. S/G is entitled to a slight credit for its auxiliary power proposal. No comparative demerit attaches to the proposal of S/G under the diversification criterion.

Cozzin Communications

346. Cozzin is entitled to 49 percent full-time quantitative integration credit for the participation of Joseph T. Zingale as its general manager. That integration credit is enhanced by Mr. Zingale's promise of future local residency and his past broadcast experience.

347. Cozzin receives a slight diversification demerit for its ownership of an LPTV facility at Alachua, Florida. Cozzin did not propose to divest this interest until sometime after the "B" cut-off date.

348. Cozzin will not receive a diversification demerit for Mr. Cosby's program production activities. *Golden State Broadcasting Corp.*, 100 FCC 2d 212, 54 RR 2d 348 (Rev. Bd. 1983). Finally, Cozzin is entitled to a slight enhancement credit for its proposal to utilize auxiliary power equipment.

ULTIMATE CONCLUSIONS

349. The only applicants receiving 100 percent full-time quantitative integration credit plus no diversification demerit are Women and S/G. Women is an applicant for the AM facility only, whereas S/G has applied for both the AM and the FM facility.

350. Women's quanitative enhancements (100 percent female; 100 percent local residence; 66.7 percent racial minority; substantial, for civic participation; very slight, for auxiliary power; slight for broadcast experience) outweigh those of S/G (25 percent female; 100 percent local residence; 50 percent racial minority; substantial, for civic participation; very slight, for auxiliary power). Women thus prevails over S/G in the competition between them for the AM facility; S/G is the preferred applicant in its competition with the other FM applicants.

Accordingly, IT IS ORDERED, That unless an appeal from this Partial Initial Decision is taken by a party or the Commission reviews the Partial Initial Decision on its own motion, in accordance with Section 1.276(d) of the Rules, 47 C.F.R. 1.276(d),[5] and subject to comparisons with the applications of RKO General, Inc., for renewal of its licenses for WOR and WRKS-FM, New York, New York, if and when such comparative renewal proceedings are needed, the application of Women Owning Radio, Inc., IS GRANTED; the application of S/G Communications for Station WRKS-FM IS GRANTED; and the remaining applications of Magna Media Corporation, Freedom Broadcasting Corporation, People Broadcasting Corporation, South Jersey Radio, Inc., S/G Communications, and Cozzin Communications Corporation ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Edward Luton
Administrative Law Judge

FOOTNOTES

[1] Magna Media's July 17, 1986, Motion to Dismiss Application of Women Owning Radio, Inc., and/or to Strike Findings and Reply Findings is denied.

[2] The Motion of Women Owning Radio, Inc., for Leave to File Pleading, filed July 15, 1986, is denied.

[3] The citations herein to "Stipulation" refer to the joint stipulation of that title concerning the broadcast interests of Price Communications and its subsidiaries that was filed on January 17, 1986, on behalf of all the applicants in this proceeding.

[4] In January 1985, Mr. Baeza devoted 248.1 hours to Debevois & Plimpton activities, for an average of 12 months/year times 248.1 hours equals 2977.2 hours/year divided by 52 weeks/year equals 57.3 hours/week. Of course, it is likely Mr. Baeza devoted more than 57 hours to firm activities in some weeks in January 1985 but less in other weeks.

[5] In the event exceptions are not filed within 30 days after the release of this Partial Initial Decision, and the Commission does not review the case on its own motion, this Partial Initial Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Relesed: July 11, 1988

On June 1, 1988, the Commission released a Public Notice (DA 88-763) announcing the availability of the loose-leaf version of its Rules. This document corrects the stock number for Volume VII (Parts 61-69) to read: *004-000-00472-8.*

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-321

In the Matter of

Amendment of Section 73.202(b), RM-6270
Table of Allotments,
FM Broadcast Stations.
(Volcano, Hawaii)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Timothy D. Martz (petitioner), which seeks the allotment of Channel 299A to Volcano, Hawaii, as its first FM service. Petitioner stated his intention to apply for use of the channel, if allotted. Channel 299A can be allotted to Volcano in compliance with minimum distance separation requirements.[1]

2. Accordingly, in order to provide a first FM channel to Volcano, Hawaii, comments are invited on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Volcano, Hawaii	---	299A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **September 1, 1988,** and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy D. Martz
187 Brookmere Drive
Fairfield, Connecticut 06430
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 299A at Volcano are 19-26-00 and 155-15-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-322

In the Matter of

Amendment of Section 73.202(b), RM-6267
Table of Allotments,
FM Broadcast Stations.
(Hali'imaile, Hawaii)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Timothy D. Martz (petitioner), seeking to allot Channel 288A to Hali'imaile, Hawaii, as its first FM service. Petitioner stated his intention to apply for use of the channel. Channel 288A can be allotted to Hali'imaile in compliance with the minimum distance separation requirements of the Rules.[1]

2. Accordingly, in order to provide a first FM channel to Hali'imaile, Hawaii, comments are invited on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Hali'imaile, Hawaii	---	288A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **September 1, 1988,** and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy D. Martz
187 Brookmere Drive
Fairfield, Connecticut 06430
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 288A at Hali'imaile are 20-52-16 and 156-20-38.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-323

In the Matter of

Amendment of Section 73.202(b), RM-6268
Table of Allotments,
FM Broadcast Stations.
(Kawaihae, Hawaii)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 31, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Timothy D. Martz (petitioner), which seeks to allot Channel 295A to Kawaihae, Hawaii, as that community's first FM allotment. Petitioner stated his intention to apply for use of the channel. Channel 295A can be allotted to Kawaihae in compliance with the minimum distance separation requirements.[1]

2. Accordingly, in order to provide Kawaihae, Hawaii, with its first FM channel, comments are invited on the proposal to amend the FM Table of Allotments (Section 73.202(b) of the Rules) with regard to that community as follows:

	Channel No.	
City	Present	Proposed
Kawaihae, Hawaii	—	295A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **September 1, 1988,** and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy D. Martz
187 Brookmere Drive
Fairfield, Connecticut 06430
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 295A at Kawaihae are 20-02-30 and 155-50-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-324

In the Matter of

Amendment of Section 73.202(b), RM-6368
Table of Allotments,
FM Broadcast Stations.
(Fort Bridger, Wyoming)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 31, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Jim Dunker (petitioner) the Commission has before it for consideration a petition for rule making seeking the allocation of Channel 257A to Fort Bridger, Wyoming, as that community's first local FM service. Petitioner states his intention to apply for the channel, if allotted. The channel can be allotted to Fort Bridger in compliance with the Commission's minimum distance separation requirements.[1]

2. In view of the fact that Fort Bridger, Wyoming could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Fort Bridger, Wyoming	---	257A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **September 1, 1988,** and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Jim Dunker
P. O. Box 34
Fort Bridgert, WY 82933
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates are 41-19-06 and 110-22-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-325

In the Matter of

Amendment of Section 73.202(b), RM-6316
Table of Allotments,
FM Broadcast Stations.
(Ocean Springs, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 1, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Charles H. Cooper (petitioner), licensee of Station WOSM(FM), Ocean Springs, Mississippi, seeking the substitution of Channel 276C2 for Channel 276A at Ocean Springs.[1] Petitioner also requests the modification of the license for Station WOSM(FM) to specify Channel 276C2 instead of 276A.

2. We believe petitioner's proposal warrants consideration. Channel 276C2 can be allocated to Ocean Springs in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the current site of Station WOSM(FM).[2] We shall also propose to modify the license of Station WOSM(FM), Channel 276A, to specify operation on Channel 276C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for the Ocean Springs, Mississippi area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Ocean Springs, Mississippi	276A	223A,[3] 276C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 1, 1988**and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Bodorff
Charles H. Cooper
John Joseph McVeigh
Fisher, Wayland, Cooper
and Leader
1255 Twenty Third St., N.W.
Suite 800
Washington, D.C. 20037-1125
(Counsel to the petitioner)

4720 Radio Road
Ocean Springs, Mississippi
39564

6. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Order to the following:

Benchmark Communications Corp.
4700 S. W. 75th Avenue
Miami, Florida 33155
(Permittee of Station WCCJ(FM),
Chatom, Alabama)

John Wells King
Haley, Bader and Potts
2000 M St., N.W.
Suite 600
Washington, D.C. 20036-4574
(Counsel for Station WCCJ(FM))

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Petitioner filed a counterproposal in MM Docket 87-521 which we treated as comments in that proceeding and accepted here as a new petition. *See* 2 FCC Rcd. 7109 (1987). In response to those comments, a site retriction 4.4 kilometers west has been imposed on Channel 223A at Ocean Springs to prevent an intermediate frequency spacing relationship between the two allotments.

[2] The coordinates for Channel 276C2 are 30-24-34 and 88-42-23. Channel 276C2 can be allocated to Ocean Springs provided Station WCCJ(FM), Channel 276A, Chatom, Alabama, relocates to Channel 291A. The substitution of channels at Chatom was made in MM Docket 85-387, effective June 2, 1986. *See* 51 FR 16322 (May 2, 1986). Since it does not appear that Station WCCJ has accomplished this change, we shall serve it a copy of this Notice of Proposed Rule Making.

[3] Channel 223A has been proposed in MM Docket 87-521.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-333

In the Matter of

Amendment of Section 73.202(b), RM-6325
Table of Allotments,
FM Broadcast Stations.
(Sartell, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 10, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Sartell FM, Inc. (petitioner), requesting the substitution of FM Channel 244C2 for Channel 241A at Sartell, Minnesota. Petitioner also requests the modification of its construction permit (BPH 860929MB) for Channel 241A to specify Channel 244C2.[1]

2. We believe petitioner's proposal warrants consideration. Channel 244C2 can be allocated to Sartell, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules.[2] Since Sartell is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government is required for this allotment. We shall also propose to modify the construction permit held by petitioner for Channel 241A, to specify operation on Channel 244C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for the Sartell, Minnesota area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Sartell, Minnesota	241A	244C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 1, 1988,** and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Bodorff
Fisher, Wayland, Cooper
& Leader
1255 - 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Counsel for the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The construction permit was granted February 10, 1988.

[2] The coordinates for Channel 244C2 are 45-44-47 and 94-03-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-332

In the Matter of

Amendment of Section 73.202(b), RM-6390
Table of Allotments,
FM Broadcast Stations.
(Egg Harbor City, New Jersey)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1988; Released: July 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Rodio Radio, Inc. (petitioner), requesting the substitution of Channel 285B1 for Channel 285A at Egg Harbor City, New Jersey, and the modification of its license for Station WRDR(FM) to specify operation on the higher powered channel. Channel 285B1 can be allotted to Egg Harbor City in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.6 kilometers (14.1 miles) east to avoid a short-spacing to Station WQHQ, Channel 284B, Ocean City, Maryland.[1]

2. As requested, we shall also propose to modify petitioner's license for Station WRDR(FM) to specify Channel 285B1. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of this channel at Egg Harbor City nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

3. We believe the public interest would be served by proposing the substitution of Channel 285B1 for Channel 285A at Egg Harbor City, New Jersey, since it could provide the community and its environs with expanded radio service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Egg Harbor City, New Jersey	285A	285B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 1, 1988,** and reply comments on or before **September 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James M. Weitzman, Esq.
Kaye, Scholer, Fierman, Hays and Handler
1575 Eye Street, N.W.
Washington, D.C. 20006
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 39-29-05 and West Longitude 74-23-38.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-392

In re Applications of

UN2JC COMMUNICATIONS (LIMITED) File No. BPCT-850611KE

Jose Angel Salcido, Jr., d/b/a SALCIDO BROADCASTING CO. File No. BPCT-850723KE

For Construction Permit
for a New Television Station
El Paso, Texas

ORDER

Adopted: June 28, 1988; Released: July 11, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. By Initial Decision (I.D.), FCC 88D-12, released April 20, 1988, the application of UN2JC Communications (Limited) for a construction permit for a new television station in El Paso, Texas was granted and the competing application of Jose Angel Salcido d/b/a Salcido Broadcasting Co. was denied. On June 20, 1988, UN2JC filed contingent exceptions with the Review Board. Salcido did not file exceptions and the period of time prescribed by 47 CFR 1.276 (a)(1) for doing so has expired. By letter dated June 20, 1988, Salcido informed the Board of its intent to cease any further prosecution of its application. In view of these circumstances, UN2JC on June 21, 1988 moved to withdraw its contingent exceptions.

2. ACCORDINGLY, IT IS ORDERED, That the motion for withdrawal of contingent exceptions, filed June 21, 1988 by UN2JC Communications (Limited) IS GRANTED.

FEDERAL COMMUNICATONS COMMISSION

Norman B. Blumenthal
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-350

In the Matter of

Amendment of the Maritime
Services Rules to permit
noncommercial communications on
VHF channels 79 and 80.

NOTICE OF PROPOSED RULE MAKING

Adopted: June 27, 1988; Released: July 11, 1988

By the Commission:

1. By letter dated May 13, 1987, the Michigan Steelhead and Salmon Fisherman's Association (Association) requested that the Commission provide two additional VHF channels in the Maritime Radio Service for use by noncommercial or recreational vessels. The Association points out that there are 720,000 boats registered in Michigan alone and that radio traffic on the Great Lakes during the boating season has become very congested. Additionally, it appears that this shortage of VHF noncommercial frequencies is not restricted to the Great Lakes. Major ports and boating areas with large numbers of recreational vessels such as Long Island Sound, the Chesapeake Bay, Florida, Southern California and Puget Sound, to name some prominent examples, are known to experience considerable congestion particularly on weekends or on a seasonal basis. For this reason, we are proposing to amend the Rules to provide relief on a nationwide rather than a regional basis.

2. Section 80.373(f) of the Commission's Rules, 47 C.F.R. § 80.373(f), lists the VHF channels in the 156-162 MHz band for use by ships and private coast stations. There are currently thirteen channels for use by commercial vessels, three of which are for intership use only. There are currently six channels for use by noncommercial vessels, one of which is for intership use only. By its *Report and Order* in PR Docket No. 83-431, FCC 85-441, 50 FR 33942, (1985), the Commission assigned channel 70 (156.525 MHz), which had previously been available for noncommercial use, for digital selective calling in accordance with international usage (PR No. 4681A). This action, while necessary, nevertheless exacerbated the shortage of noncommercial channels.

3. Based on a computer search of the Commission's licensing records, the fewest number of stations are licensed to operate on current commercial channels 79 (156.975 MHz) and 80 (157.025 MHz). Further, limited Commission monitoring of these frequencies during a Friday through Monday period revealed minimal commercial use of these frequencies. Consequently, it appears these channels can best accommodate this additional usage. For this reason, we propose to permit noncommercial vessels to share the use of these two channels with commercial vessels and coast stations. As noted above, the greatest congestion on VHF noncommercial frequencies occurs on weekends during the boating season. The greatest usage of commercial frequencies occurs during the normal workweek, Monday through Friday. Thus, commercial and noncommercial peak communications may not overlap significantly. Informal contacts with commercial vessel operators in a number of port areas appear to support this supposition. For this reason, we believe sharing should be feasible. Nevertheless, we recognize that noncommercial use of these channels may negatively affect existing commercial users of these channels. We expressly request comments on ways these effects can be avoided or lessened.

4. Accordingly, we hereby propose to amend Section 80.373(f) of the Commission's Rules to permit channels 79 and 80 to be used for both commercial and noncommercial communications in the Maritime Services. The proposed amendments are issued under the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

5. Under procedures set out in Section 1.415 of the Rules and Regulations, 47 C.F.R. § 1.415, interested persons may file comments on or before **September 1, 1988** and reply comments on or before **September 16, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

6. In accordance with the provision of Section 1.419 of the Rules and Regulations, 47 C.F.R. § 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

7. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. § 1.202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 C.F.R. § 1.1203.

8. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. 47 C.F.R. § 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of the same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. 47 C.F.R. § 1.1206.

9. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

10. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because, if promulgated, it will not have a significant economic impact on a substantial number of small entities. The proposed rule allows noncommercial vessels to voluntarily use these frequencies. The effect on existing users will not be substantial because the frequencies are already assigned on a shared basis for commercial communications and this additional use should not substantially affect present users. As noted above, the limited monitoring and licensing data available indicate that these frequencies appear to have the fewest commercial users assigned and that a limited overlap of peak communications periods exist between commercial and noncommercial vessels. Further, we have chosen the channels with the fewest number of licensed stations on them. We do not believe that a substantial number of small commercial entities in any given area will be substantially affected. This change should not have a substantial economic impact on the operations of small entities.

11. A copy of this *Notice* shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303 48 Stat. 1066, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.373, paragraph (f) is proposed to be amended by adding Channels 79 and 80 to the Table as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f) * * *

* * * * *

	Noncommercial	
68	156.425	156.425
09	156.450	156.450
69	156.475	156.475
71	156.575	156.575
72	156.625	
	Intership only	
78	156.925	156.925
79	156.975	156.975
80	157.025	157.025

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-293

In re Applications of

Minnie O. Foulk and Renee Ridley Biselli, d/b/a WASHOE SHOSHONE BROADCASTING, A Limited Partnership	File No. BPCT-850328KE
RENO-ELEVEN TELECASTERS	File No. BPCT-850509KH
RENO MINORITY BROADCASTING CORPORATION	File No. BPCT-850509KJ
PAGE ENTERPRISES, INC. (KAME-TV)	File No. BMPCT-850509KQ
RENO COMMUNITY BROADCASTING CO. A Nevada Limited Partnership	File No. BPCT-850509KS
NEVADA TELEVISION CORPORATION	File No. BPCT-850509KU

For Construction Permit for a New VHF Television Station at Reno, Nevada

ORDER

Adopted: June 28, 1988; Released: July 12, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Review Board has under consideration a motion filed June 24, 1988, on behalf of Reno-Eleven Telecasters (RET), for an extension of time of 15 days until August 5, 1988 in which to file a petition for reconsideration of our Decision in this proceeding, *Washoe Shoshone Broadcasting*, FCC 88R-30, released June 20, 1988. RET recites that on June 23, 1988 it hired new counsel to represent it and that counsel needs additional time to adequately prepare the petition.

2. Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, provides that "[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the . . . decision . . . complained of." The statutory language is mandatory and precludes the Commission from extending the time for filing petitions for reconsideration beyond the prescribed limitation. Accordingly, RET's request is hereby denied. *West Michigan Telecasters, Inc.*, 57 FCC 2d 1286 (Comm'n. 1976); *see also Jerry J. Wells*, FCC 83I-66, released June 2, 1983 (Comm'n).

3. ACCORDINGLY, IT IS ORDERED, That the motion for extension of time filed June 24, 1988 by Reno-Eleven Telecasters IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

CANNON COMMUNICATIONS CORPORATION Chatham, Massachusetts	**MM DOCKET NO. 83-976** File No. BPH-811102AH
FIRST CLASS COMMUNICATIONS, LTD. Chatham, Massachusetts	**MM DOCKET NO. 83-982** File No. BPH-820624AX
HEATHER H. STENGEL Chatham, Massachusetts	**MM DOCKET NO. 83-983** File No. BPH-820624AZ

For Construction Permit
for a new FM Station

MEMORANDUM OPINION AND ORDER

Adopted: June 27, 1988; Released: July 11, 1988

By the Commission:

1. This proceeding is before us as a result of a remand by the United States Court of Appeals for the District of Columbia Circuit. *HBZ Communications, Inc.*, No. 86-1347 (Jan. 15, 1988).

BACKGROUND

2. The applicant selected by the Commission in this comparative licensing proceeding was Joseph A. Ryan. *Cannon Communications Corp.*, 101 FCC 2d 169 (Rev. Bd. 1985), rev. denied, FCC 86-244 (May 15, 1986). Ryan subsequently assigned his construction permit to his wholly owned corporation, First Class Communications, Ltd. Both that corporation and Ryan will be referred to hereafter as Ryan.

3. After the Commission granted Ryan's application, the remaining applicants in this proceeding took an appeal to the United States Court of Appeals for the District of Columbia Circuit. During the pendency of that appeal, Ryan filed with the Commission an application to modify his construction permit. He claimed that the geographic coordinates for his antenna site were erroneously specified in his original application and that he sought to modify his construction permit to correct those erroneous coordinates. He further claimed that he was not changing his actual antenna site location but was merely correcting prior errors which he discovered as a result of a recent survey. That modification application was subsequently granted by the Commission, and Ryan thereafter constructed his station, which he now operates under program test authority granted by the Commission.

4. On October 20, 1987, while the underlying licensing determination in this case was still pending on appeal, two of the applicants in the proceeding -- Cannon Communications Corporation and HBZ Communications, Inc. -- requested the court to remand the case to the Commission.[1] Essentially, both contended that Ryan did in fact change his antenna site location when he sought to modify his construction permit and that he has purposely concealed that fact from the Commission. Cannon additionally contended that Ryan had offered equity interests in his station to two individuals even though he previously represented to the Commission that he would be the sole owner of the station. In support of these contentions, Cannon submitted an affidavit from Steven J. Callahan, Ryan's former chief engineer, who was hired to oversee the construction and initial operation of the station.

5. Ryan opposed the requests for remand and submitted affidavits from himself and others denying the charges. In so doing, Ryan also charged Cannon with improprieties. He contended that Lynn Landy, the principal owner of Cannon, had approached him with an ultimatum several days before the motions for remand were filed with the court: Ryan must sell her a controlling interest in his station or else she would submit Callahan's affidavit to the Commission.

6. The Commission supported those motions for remand, and, shortly thereafter, the Court of Appeals remanded this case as heretofore mentioned.

DISPOSITION

7. We will order further evidentiary hearings in this proceeding. Certainly, the charges -- misrepresentation and concealment -- raised against Ryan by Cannon while this proceeding was pending before court are serious and raise substantial and material questions of fact as to Ryan's fitness to be a Commission licensee. The same is true of the charges leveled against Cannon. If Cannon's principal owner, Lynn Landy, attempted to extort an interest in Ryan's station as claimed, then there has been a serious abuse of the Commission's processes which likewise calls into question the fitness of that applicant to be a Commission licensee. *See Gulf Coast Communications, Inc.*, 81 FCC 2d 499, review denied, FCC 82-128 (1982).

8. In remanding this case to us, the court obviously recognized the decisional significance of the charges, and so did the Commission when it supported the motions for remand then under consideration by the court. Hence, what we must now determine is whether the information before us regarding those charges provides a sufficient basis to resolve them in the public interest. For the reasons which follow, we find that it is not.

9. We have reexamined the filings that were before the court when remand of this case was under consideration, as well as the parties' filings tendered to the Commission -- namely, a Petition to Reopen the Record and Enlarge Issues filed by Cannon and responsive pleadings thereto, and a Contingent Petition to Enlarge Issues filed by Ryan and responsive pleadings thereto. In those pleadings, Cannon and Ryan raise the same charges against each other and rely on the same documentation to either support or deny those charges. For instance, Cannon's charges of misrepresentation and concealment leveled against Ryan are supported by Callahan's affidavit, who claims personal knowledge of the facts; the charges are denied in affidavits by Ryan and others, who also claim knowledge of the facts; and, finally, the same charges are reasserted in a further affidavit by Callahan. Ryan's charge of an abuse of process by Cannon is supported by his affidavit and de-

nied in an affidavit by Landy, Cannon's principal owner. Although each of the affiants attests to his or her version of the facts in a detailed and specific manner, the affidavits supporting the charges and those denying the charges differ markedly as to critical and material facts.

10. Consequently, based on those written submissions, we are unable to resolve the decisionally significant matters brought to our attention as a result of the court's remand of this case. Nor do we believe that further written submissions from the parties would be productive, particularly in view of the nature of the purported improprieties and the circumstance under which they were alleged to have transpired. Rather, we are convinced that the public interest, the ends of justice, and the Commission's processes will be best served by remanding this proceeding for further evidentiary hearings, where cross-examination of witnesses can be conducted and appropriate demeanor findings can be made by the presiding administrative law judge.

11. ACCORDINGLY, IT IS ORDERED, That, pursuant to 47 U.S.C. § 4(j), this proceeding IS REMANDED to the presiding Administrative Law Judge for further proceedings upon the following issues and for preparation of a Supplemental Initial Decision:

(A) To determine whether Ryan misrepresented to and/or concealed from the Commission, in his application to modify his construction permit filed with the Commission on August 26, 1986, the reasons for and the circumstances surrounding his request to modify his construction permit;

(B) To determine whether Ryan offered equity interests in his station to other individuals in conflict with his previous representation to the Commission that he would be the sole owner of the station;

(C) To determine, in light of the evidence adduced pursuant to issues A and B, whether Ryan is basically qualified to be a Commission licensee;

(D) To determine whether Lynn Landy, principal owner of Cannon, attempted to obtain an equity interest in Ryan's station by improper means, and, if so, whether Cannon is basically qualified to be a Commission licensee.

12. IT IS FURTHER ORDERED, That the burden of going forward with the evidence under the issues A and B SHALL BE upon Cannon, and the burden of going forward with the evidence under issue D SHALL Be upon Ryan. Consistent with *Elyria - Lorain Broadcasting Co.*, 6 RR 2d 191, 198 (1965), the burden of proof as to Ryan's qualifications to be a licensee SHALL BE on Ryan, and the burden of proof as to Cannon's qualifications to be a licensee SHALL BE on Cannon.

13. IT IS FURTHER ORDERED, That the Petition to Reopen the Record and Enlarge Issues filed October 20, 1987 by Cannon IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

14. IT IS FURTHER ORDERED, That the Contingent Petition to Enlarge Issues filed March 11, 1988 by Ryan IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

15. IT IS FURTHER ORDERED, That the Motion for Leave to Amend and to Substitute Party filed February 17, 1988 by Ryan IS GRANTED, the amendment IS ACCEPTED, and the caption of this proceeding has been so modified.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTE

[1] HBZ's application was subsequently dismissed in accordance with its settlement agreement with Cannon. FCC 871-029 (Mar. 25, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

PRIMEMEDIA BROADCASTING, INC. Fargo, North Dakota	BPH-850712M8
PRIMEMEDIA BROADCASTING, INC. Great Falls, Montana	BPH-850712YS
PRIMEMEDIA BROADCASTING, INC. Orlando, Florida	BPH-860506MN
FLEMING BROADCASTING Raleigh, North Carolina	BPH-860703MG

For Construction Permits for new FM facilities

MEMORANDUM OPINION AND ORDER

Adopted: June 27, 1988; Released: July 12, 1988

By the Commission:

1. The Commission has before it: (i) a petition for reconsideration, filed May 29, 1987, by PrimeMedia Broadcasting, Inc. (PrimeMedia) of the April 28, 1987 action of the Chief, Audio Services Division, Mass Media Bureau dismissing its applications in Fargo, North Dakota, and Great Falls, Montana; (ii) a petition for reconsideration, filed jointly on June 30, 1987, by PrimeMedia, and Fleming Broadcasting (Fleming), of the May 29, 1987 action of the Chief, Audio Services Division, Mass Media Bureau, dismissing PrimeMedia's application in Orlando, Florida, and returning Fleming's application in Raleigh, North Carolina; (iii) amendments filed on May 29, 1987, by both PrimeMedia and Flemming to their respective applications in Fargo, Great Falls, Orlando, and Raleigh; (iv) a supplement to petition for reconsideration in Great Falls, filed June 30, 1987, by PrimeMedia.[1] This matter has been referred to the Commission *en banc* by the Mass Media Bureau, pursuant to 47 C.F.R. § 1.106(a)(1) in order to expedite a final determination.

I. BACKGROUND

2. On July 12, 1985, PrimeMedia filed commercial FM applications in Great Falls, Montana, and Fargo, North Dakota. On May 6, 1986, PrimeMedia applied for an additional FM facility in Orlando, Florida. In each of these applications, 50.1% of the voting stock of the corporate applicant was held by the Metcalfe Trust. The settlor/beneficiary of this trust, Mr. Jeremy Walker Metcalfe, is a citizen of the United Kingdom. Each application stated that the stock held in irrevocable trust for Mr. Metcalfe would be managed and voted by trustees John Metelski and H. Kenneth Merritt, both citizens of the United States. A further application to which PrimeMedia was a party was filed by Fleming on July 3, 1986, for a Commercial FM facility in Raleigh, North Carolina. In this application, PrimeMedia held a noninsulated 75% limited partnership interest.[2] The Metcalfe Trust, as in the preceding applications, held 50.1% of the voting stock in PrimeMedia.

3. On April 28, 1987, the PrimeMedia applications for Fargo, and Great Falls were dismissed because the degree of alien ownership proposed by the applicant was found to exceed the 20% benchmark set forth in 47 U.S.C. § 310(b)(3).[3] In dismissing these applications, the Bureau stated that the Commission will not allow the formation of an irrevocable trust of which an alien is the beneficiary, or indeed any other ownership instrument which would have the effect of insulating a foreign national, so as to circumvent the alien ownership restrictions contained in Section 310 of the Communications Act of 1934. While the trustees would exercise legal title and control over the stock in the licensee corporation for the benefit of the alien beneficiary, the alien would retain the equitable interest in the stock. Citing *Wilner & Scheiner*, 103 FCC2d 511 (1985), *reconsidered in part*, (hereinafter referred to as *Reconsideration Order)*, 1 FCC Rcd 12 (1986), the Bureau noted that it was this equity ownership interest that Congress sought to limit by the adoption of equity benchmarks, even in cases where such interests might be noninfluential in nature. Because compliance with the citizenship requirements of Section 310 is necessary for an application to be acceptable for filing, these applications were dismissed prior to designation for comparative hearing of the mutually exclusive applications for these communities. *See United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202 (1956).

4. On May 29, 1987, PrimeMedia filed its petition for reconsideration challenging the staff's ruling on the Fargo and Great Falls applications. At this time, PrimeMedia also filed amendments to its Fargo and Great Falls applications to reduce the interest of the Metcalfe Trust in PrimeMedia from 50.1% to 5% in case it did not prevail on the merits of its petition for reconsideration. Also on May 29, 1987, PrimeMedia and Fleming filed amendments to their respective Orlando and Raleigh applications, after expiration of the amendment of right period in these proceedings, to avoid dismissal of these applications for the same reason specified in the Bureau's April 28, 1987 ruling on the Fargo and Great Falls applications. However, on the same day these amendments were filed with the Secretary's Office at the Commission, the Bureau dismissed the Orlando and Raleigh applications because their respective alien ownership interests exceeded the limits set forth in Sections 310(b)(3) and (4).[4] PrimeMedia and Fleming's June 30, 1987, petition for reconsideration followed.

II. PROCEDURAL MATTERS

5. PrimeMedia and Fleming submit that their May 29, 1987 amendments were filed pursuant to 47 C.F.R. § 1.65 which requires applicants to maintain the continuing accuracy and completeness of their applications and calls for the filing of amendments whenever information in a pending application is no longer accurate. Citing *Azalea Corp.*, 31 FCC2d 561 (1971) and *Spanish International Communications Corporation*, 2 FCC Rcd 3336 (1987), petitioners also argue that good cause exists for acceptance of these amendments because they address a basic qualifying factor. Furthermore, petitioners argue that acceptance of these amendments will not disrupt the orderly conduct of the Commission's business and that these amendments will not result in any comparative advantage to petitioners or prejudice other parties to the respective proceedings. Finally, with respect to the amendments to the Orlando and Raleigh applications, petitioners submit that the May 29 amendments brought these applications into compliance with Section 310(b) before they were dismissed and, therefore, dismissal of these applications was improper.

6. In the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985), *recon. denied*, 50 Fed. Reg. 43157 (1985), the Commission adopted strict rules governing acceptance of amendments to applications for FM facilities. These rules provide that amendments which address the acceptability or grantability of an application may be filed as a matter of right any time prior to the expiration of the 30-day period triggered by release of the Public Notice announcing that the subject application has been accepted for tender. 50 Fed. Reg. at 19941; *See also* 47 C.F.R. § 73.3522(a)(6). Once this period expires, predesignation amendments "will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514" of our rules. 47 C.F.R. § 73.3522(a)(6). Petitioners state that prior to the April 28, 1987 staff action dismissing the Fargo and Great Falls applications, they had no reason to suspect that any of their applications did not comply with Section 310(b). The fact that an applicant may not have been aware that its application was defective does not justify acceptance of a late filed amendment designed to cure that defect. If this were the case, any applicant could easily circumvent the amendment procedures set forth in our rules by claiming that it was ignorant as to the defects in its application. We also reject the petitioners' attempt to invoke § 1.65 of the rules in filing their late amendments. Section 1.65 requires applicants to maintain the continuing accuracy of the information contained in their applications. This rule does not, however, require the acceptance of such amendments when, as in the instant case, they cure an acceptability or grantability defect in the underlying application and the period for filing curative amendments as of right has already lapsed. *See , e. g., Donovan Burke*, 60 RR2d 110, 112-13 (1986). Section 1.65 and § 73.3522 are complimentary, not conflicting rules and we will not allow applicants, under the guise of a § 1.65 reporting amendment, to circumvent deadlines established for the filing of curative amendments per § 73.3522. Accordingly, we find that petitioners have failed to establish good cause for acceptance of their May 29 amendments and that these amendments should be dismissed as untimely.[5] Having determined that all of the amendments were untimely, petitioners claim that the Orlando and Raleigh applications were in compliance with Section 310(b) when dismissed must be rejected.

III. PETITIONERS SUBSTANTIVE ARGUMENTS

7. Petitioners argue that the applicable legislative history and case law suggest that the purpose of Section 310(b) was to guard against actual alien "control" of domestic radio facilities in order to prevent their use against the government during times of war. *See Noe v. FCC*, 260 F.2d 739 (D.C. Cir. 1958); *Kansas City Broadcasting Co., Inc.* 5 RR 1057 (1950). Petitioners contend that there have been no cases construing Section 310(b) as it applies to equity ownership interests held in trusts and that the cases relied upon by the staff dismissing their applications only dealt with the application of Section 310(b) to equity interests held by limited partners. Given the insulation offered through a trust, petitioners argue that their situation is sufficiently different from the limited partnership interests referred to by the staff and thus, warrants different treatment by the Commission. Finally, petitioners contend that while no cases have construed Section 310(b) as it relates to interests held in trust, the Commission has decided cases pertaining to other area's of the Commission's rules which have examined the insulating nature of trusts. *See* Rust *Craft Broadcasting Company*, 68 FCC2d 1013 (1978) and *Multiple Ownership Rules (Ownership Attribution)*, 97 FCC2d 997 (1985), *recon. granted*, 58 RR2d 604 (1985), *recon. of later Order granted in part*, 1 FCC Rcd 802 (1986). *See also* 47 C.F.R. § 73.3555, note 2(e) and 47 C.F.R. § 76.501(a) note 2(e). Recognizing that these cases do not pertain to trusts in a Section 310(b) context, petitioners nevertheless argue that these cases are instructive and, in the absence of more explicit guidance, must apply in the instant case.

IV. DISCUSSION

8. Section 310(b)(3) prohibits the grant of an application to a corporation where more than one fifth of the capital stock is owned of record or voted by aliens or their representatives.[6] The petitioners' contend that the legislative history, and the case law construing 47 U.S.C. § 310 do not support extension of the alien ownership restrictions to equity and other ownership interests which confer potential rather than actual control. This same argument was advanced in *Wilner & Scheiner*, 102 FCC2d 511. There, we noted that while preventing aliens from exercising actual control over broadcast facilities was one of the objectives underlying the adoption of Section 310:

> this was not the sole purpose underlying the enactment of Section 310(b). Rather Section 310(b) reflects the broader purpose of "safeguard[ing] the United States from foreign influence" in the field of broadcasting. The specific citizenship requirements governing positional, ownership and voting interests reflect a deliberate judgement on the part of Congress as to the limitations necessary to prevent undue alien influence in broadcasting.

Id. at 516-17 (citations and footnotes omitted). Thus, while the petitioners' citations of *Noe v. FCC*, 260 F.2d 739, and *Kansas City Broadcasting Co., Inc.*, 5 RR 1057, are correct in that these cases identify a purpose behind the adoption of Section 310, this is not the exclusive purpose behind the alien ownership restrictions.

9. In *Reconsideration Order*, we stated that "[t]he adoption of the equity benchmarks in Section 310(b) reflects Congressional concern over substantial alien ownership of Commission licensees and persons or companies controlling these licensees even where the alien's ownership interest is noninfluential in nature." 1 FCC Rcd at 13. We further stated that:

> When it adopted the Communications Act of 1934, Congress, *inter alia*, changed the scope of the statutory benchmark so that it applied to equity interests "owned of record *or* voted . . . by aliens." 47 U.S.C. § 310(a)(5) (1934) (emphasis supplied) [presently codified at 47 U.S.C. §§ 310(b)(3)-(4) (1982)]. *See* S. Rep. No. 781, 73rd Cong., 2d Sess. 7 (1934). We believe that the adoption of an independent restriction on equity ownership by aliens in addition to one relating to voting rights indicates a specific Congressional concern about substantial equity investment by aliens.

Id. at 13, note 13. We have also, in applying Section 310(b) to non-corporate entities "interpreted the term 'capital stock'. . . to encompass *the alternative means by which equity or voting interests are held in these businesses.*" *Wilner and Scheiner*, 103 FCC2d at 516 (emphasis added). Thus, contrary to petitioners' suggestion, we do not believe that Congress intended to exclude equitable ownership interests which do not confer actual control from the scope of Section 310(b).

10. Petitioners also contend that trusts differ from limited partnerships as an insulating device and, therefore, warrant different treatment by the Commission in the Section 310(b) context. Specifically, petitioners argue that the insulation provided by a properly constructed trust leaves a beneficiary with neither control nor the indicia of ownership, but solely with the residual benefit of receiving profits. Petitioners assert that because the beneficiary of a properly insulated irrevocable trust does not own or possess any of the rights that may accompany ownership, as with the limited partnership structure, the fact that the grantor or beneficiary is an alien should not invoke the benchmark provisions under Section 310(b).

11. In *Reconsideration Order*, a similar argument was made with respect to preferred stock interests, 1 FCC Rcd at 13. Specifically, the parties therein requested that preferred stock be excluded from the definition of "capital stock" in determining compliance with Sections 310(b)(3) and (4) "where the applicant certifies that the preferred stock contains none of the indicia normally associated with equity ownership." *Id.* at 13. Without giving any consideration to the "indicia of ownership," we declined to adopt this exclusion noting that the term "capital stock" generally encompasses various classes of stock, including preferred stock, and that the legislative history and language of the statute did not support any different interpretation of the term. *Id.* Similarly, we do not believe that the legislative history or statutory language provide a clearly expressed legislative intent to exclude "capital stock" held in trust for the benefit of an alien owner from the limitations prescribed in Section 310(b). Therefore, such direct ownership interests in a broadcast licensee may not exceed the 20% benchmark set forth in Section 310(b)(3) regardless of the insulated structure of that ownership interest. The Commission does not have any discretion in the application of the statutory restrictions set forth in Section 310(b)(3). *See Kansas City Broadcasting Co., Inc.*, 5 RR 1094 (1952). Thus, once we determine that the alien ownership interest in a broadcast licensee exceeds the statutory benchmark in Section 310(b)(3), our inquiry is at an end and "we have no authority to independently assess whether or not the grant of a license to a company in which an alien holds an ownership interest above 20% would result in undue influence or control." *Wilner and Scheiner*, 103 FCC2d 517 at note 33. For this same reason, we may not extend our attribution standards applicable to trusts in the multiple ownership and cross-ownership contexts (*see* 47 C.F.R. §§ 73.3555, note 2(e) and 76.501, note 2(e)) so as to allow applicants to circumvent the will of Congress and exceed the equity ownership benchmark in Section 310(b)(3).

12. The Fleming application in Raleigh, North Carolina was filed as a limited partnership, wherein PrimeMedia holds a non-insulated 75% limited partnership interest. The Metcalfe trust in turn holds 50.1% of the voting stock in PrimeMedia. As already noted, Jeremy Walker Metcalfe will be attributed with ownership of the trust's stock due to his 50.1% equity interest. However, here the statutory restrictions on alien ownership are invoked under Section 310(b)(4) rather than Section 310(b)(3). As we held in *Wilner & Scheiner*, 103 FCC2d at 523, "[t]he benchmark limitations contained in Section 310(b)(4), *inter alia*, apply to *ownership and voting* interests in limited partnerships which, in turn, hold controlling interests in a licensee." (emphasis added). Under Section 310(b)(4), the aggregate of alien equity interests in a parent corporation, which in turn controls a corporate licensee, may only amount to 25%, unless the Commission finds that the public interest would be served. In a vertical ownership chain, a multiplier is used to calculate the interests of adequately insulated alien limited partners with respect to the licensee. *Id.* at 523. Where the alien limited partnership interest is not adequately insulated, the multiplier is not used. *Id.* Because PrimeMedia's interest in Fleming is not adequately insulated, *see* note 2, *supra*, the multiplier will not be applied. Since Jeremy Metcalfe Walker owns more than 50% of PrimeMedia's capital stock, he will be attributed with the full 75% limited partnership interest which PrimeMedia holds in Fleming.

13. The provisions of Section 310(b)(4) expressly provide the Commission with discretion to allow levels of indirect alien ownership along a vertical ownership chain in excess of the statutory benchmarks. Thus, we have determined that on a case-by-case basis we will consider whether it would be in the public interest to permit such ownership or control notwithstanding that the alien interest in the licensee would exceed the statutory benchmarks. *Id.* at 524. Here, the attributable alien interest of 75% far exceeds the 25% benchmark. Furthermore, there are at least nine other applicants for Channel 275A in Raleigh, North Carolina who have been found acceptable by the Commission staff. None of these other applicants is proposing alien involvement in excess of the statutory benchmarks. Given the diversity and number of currently competing applicants in the Raleigh proceeding, we can find no public interest in allowing an applicant so far in excess of the statutory benchmark contained in Section 310(b)(4) to be added to that proceeding.

V. CONCLUSION

14. Accordingly, IT IS ORDERED, That the petitions for leave to amend filed May 29, 1987, by PrimeMedia and Fleming for their respective applications in Fargo, North Dakota, Great Falls, Montana, Orlando, Florida, and Raleigh, North Carolina ARE DENIED.

15. IT IS FURTHER ORDERED, That the petitions for reconsideration filed by PrimeMedia on May 29, 1987, for its applications in Fargo, North Dakota, and Great Falls, Montana, and the petition for reconsideration filed by PrimeMedia and Fleming on June 30, 1987, for their respective applications in Orlando, Florida, and Raleigh, North Carolina, ARE DENIED.

16. IT IS FURTHER ORDERED, That the supplement to petition for reconsideration filed June 30, 1987, by PrimeMedia for Great Falls, Montana IS RETURNED WITHOUT CONSIDERATION.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster,
Acting Secretary

FOOTNOTES

[1] This supplement is untimely pursuant to 47 C.F.R. § 1.106(f) and shall be returned without consideration.

[2] *See* captioned File No. BPH-860703MG. Exhibit C therein states that the partnership agreement of the applicant contains "customary provisions" for, *inter alia*, addition or removal of partners. There is no certification that the limited partners shall have no material involvement in the management or operation of the media-related activities of the partnership. Thus, PrimeMedia's limited partnership interest in Fleming is noninsulated. *See Report and Order* in MM Docket 83-46, 97 FCC2d 997 (1984), *reconsidered in part*, 58 RR2d 604 (1985) and 61 RR2d 739 (1986); *see also* 47 C.F.R. § 73.3555, Note 2(g).

[3] This Section states in pertinent part that: "No broadcast . . . radio station license shall be granted to or held by . . . (3) any corporation . . . of which more than one fifth of the capital stock is owned of record or voted by aliens or their representatives."

[4] Section 310(b)(4) relates to the interest held by a foreign national in a parent company which controls a licensee of a broadcast facility. Specifically, this Section states, in pertinant part: "No broadcast . . . radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation . . . of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, . . . if the Commission finds that the public interest will be served by the refusal or revocation of such license."

[5] Petitioners would compare the current situation with one in which the public interest was deemed to be served by permitting the sale of an operating facility by a licensee found in violation of § 310 in order to prevent disruption of service. *See Spanish International Communications Corporation*, 2 FCC Rcd 3336 (1987). Here, there is no similar public interest consideration. Permitting a late filed amendment in order to allow the petitioners to cure a § 310 violation would serve only the petitioner's interest and contravene the public interest inherent in the Commission's "hard look" processing guidelines. *See Star Signal* 1 FCC Rcd 450 (1960); *Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419 (1986). Similarly, the petitioners' reference to *Azelea Corp.*, 31 FCC2d 561, is inapt. As we have repeatedly stated with respect to applicants seeking to invoke the *Azalea* case to avoid dismissal of defective applications filed pursuant to our new FM "hard look" processing procedures:

> . . . While the Commission still considers it desirable to have as many qualified applicants as possible from which to select a broadcast licensee, we have recently undertaken to place greater emphasis on providing service to the public in the most efficient, expeditious manner possible. Temporizing with applicants' flawed proposals or procedural failures has in the past disserved the public interest by inordinately delaying the initiation of new service. [citations omitted] *James C. Rogers, III*, 2 FCC Rcd 5536, 5537 (1987).

[6] Although the language of Section 310(b) specifically addresses corporate applicants, the alien ownership restrictions embodied therein have been applied with equal force to non-corporate entities and associations. *See e.g., Farragut* Television Corp., 4 RR2d 350 (1965) (policy holders of a mutual insurance company); Kansas City Broadcasting Co., 5 RR 1057 (1952) (members of a church); Chicagol and TV Co., 4 RR2d 747 (1965) (members of a labor union); and Wilner and Scheiner, 103 FCC2d 511 (1985) (limited partnerships).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SAVANNAH CABLEVISION, INC.,
Complainant,

v. PA-87-007

SOUTH CAROLINA ELECTRIC &
GAS COMPANY,
Defendant.

ORDER

Adopted: June 30, 1988; Released: July 11, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On June 30, 1987, Savannah Cablevision, Inc. (Savannah), filed the above-referenced formal complaint with the Commission against the South Carolina Electric & Gas Company (SCEG) pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224. Savannah alleges that a particular condition of SCEG's master pole attachment agreement that precluded Savannah's right to petition the Commision to review the rates, terms, and conditions of the agreement was unjust, unfair, and unreasonable, against public policy, and in violation of Section 224 of the Act.

2. The Bureau granted SCEG an extension of time to respond to the complaint in order to facilitate the ongoing negotiations between the parties. Subsequently, in its response to Savannah's complaint, duly served on complainant's counsel of record, SCEG states that it has withdrawn the offending condition and on November 2, 1987, sent a version of the agreement to Savannah. Savannah has not filed a reply to SCEG's response nor otherwise disputed SCEG's statement. It appears that there are no longer any issues in controversy, and we therefore find that Savannah's complaint is moot.

3. Accordingly, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that the above-captioned Complaint filed by Savannah Cablevision, Inc. IS DISMISSED as moot and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

CONTEL OF INDIANA, INC. File No. W-P-C-6064

For authority pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to lease transmission facilities to provide centralized equal access service to interexchange carriers in the State of Indiana.

MEMORANDUM OPINION, ORDER AND CERTIFICATE

Adopted: June 30, 1988; Released: July 12, 1988

By the Chief, Common Carrier Bureau:

1. Contel of Indiana, Inc. (Contel) has filed the above-captioned application pursuant to Section 214 of the Communications Act of 1934 (the Act), 47 U.S.C. § 214, and Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01. Contel seeks authority to lease transmission facilities to supplement its existing facilities to provide centralized equal access services to interexchange carriers (IXCs).[1] National Telephone Cooperative Association (NTCA) filed comments. TMC of SCI, Inc. (TMC) filed a petition to deny, and Saverline Corporation (Saverline) filed comments in support of TMC's petition (jointly, Petitioners). Contel filed an opposition, and TMC replied.

I. APPLICATION

2. In conjunction with its existing fiber optic network, Contel proposes to connect 69 of its 77 digital and analog switches (approximately 130,000 access lines) to a centralized tandem switch[2] to offer its equal access service. The centralized tandem switch would be located at Seymour. Contel's existing network will be reconfigured to home [3] on the Seymour switch. IXCs will be able to obtain access to the network at Seymour, Columbus (where American Telephone and Telegraph Company takes all of its originating interLATA traffic), Greenwood and Indianapolis. Greenwood and Indianapolis are outside of Contel's territory. To provide access to those points, Contel proposes to lease facilities between Columbus and Greenwood from a subsidiary and between Greenwood and Indianapolis from an unaffiliated entity.[4] No network changes are proposed below the toll center level. Illustrative tariff information offered by Contel indicates that IXCs would be able to obtain Feature Group A, B and D facilities[5] to access approximately 130,000 subscriber lines from the centralized tandem switch in Seymour. To implement its proposal, Contel estimates that its annual lease cost will be approximately530,000 and the new Seymour tandem switch will cost1.3 million. Contel argues that interconnection points must be established through Greenwood to Indianapolis to make Contel's market attractive to IXCs currently operating in Indianapolis.

3. NTCA asserts that Contel's proposal is exempt from Section 214 application procedures by Section 2(b)(2) of the Act, 47 U.S.C. § 152(b)(2). Petitioners argue that the public interest would not be served because the extension to Indianapolis is a needless transmission link and because the proposal is anti-competitive. They also argue that an oral hearing is required.

II. COMMENTS AND DISCUSSION

A. *Section 2 (b) (2).*

4. *Comments.* NTCA asserts that it is unnecessary for Contel to seek Section 214 authority as a "subject carrier" because NTCA maintains that Contel is a "connecting carrier" pursuant to Section 2(b)(2) of the Communications Act, 47 U.S.C. § 152(b)(2).[6] NTCA bases its assertion on two premises. The first is that the plain meaning of Section 2(b)(2) exempts connecting carriers from the requirements of Section 214. Moreover, NTCA asserts, that the explicit jurisdictional limitation of Section 2(b)(2) overrides the Commission's otherwise broad authority under Section 214. NTCA argues that the courts have strictly interpreted the jurisdictional limitation of Section 2(b)(2), citing *Comtronics Inc. v. Puerto Rico Telephone Co.*, 553 F.2d 701 (1st Cir. 1977).

5. NTCA's second premise is that Section 214 is inapplicable where the interstate facet to providing local service is incidental to the offering. NTCA Comments at p. 4. According to NTCA, the courts recognize Section 2(b)(2) as exempting telephone companies whose "interstate facet of the company's operation was incidental to its primary local service. *General Telephone Co. of California v. F. C. C.*, 413 F.2d 390, 402, n.19 (D.C. Cir. 1969) [footnote omitted]." NTCA Comments at pp. 4-5. Thus, in its view, Contel's proposal falls within the definition of Section 2(b)(2) and therefore should be exempt from Section 214 regulation.

6. While supporting NTCA's contention that Section 214 is inapplicable in this instance, Contel states that it filed the captioned application to remove any doubt regarding the issue. Contel urges the Commission either to determine that it is not subject to Section 214 or act immediately on its application.

7. For its part, TMC concludes that NTCA's position contradicts the holding of *Indiana Switch Access Division* (Indiana Switch), Memorandum Opinion, Order and Certificate, File No. W-P-C-5671, released Apr. 10, 1986, *aff d on recon.*, 1 FCC Rcd 634 (Nov. 14, 1986), on which Contel relies, and is contrary to previous interpretations of Section 2(b)(2). Moreover, TMC argues, Contel does not possess the characteristics of the class of telephone companies for which Section 2(b)(2) was designed. Citing *Declaratory Ruling on Sec. 2 (b) (2) to Bell Operating Companies*, FCC 87-53, 62 Rad. Reg. 2d 1075 (1987), TMC urges that Section 2(b)(2) only applies to small, local and/or family owned telephone companies which connect with toll lines for long distance service. According to TMC, none of these characteristics is applicable to Contel.

8. *Discussion.* The Communications Act of 1934 grants the Commission plenary authority over interstate and foreign communications.[7] Section 2(b)(2) of the Act creates a

limited exception to the Commission's power to regulate persons that provide interstate or foreign communications services as common carriers. That subsection exempts some of those carriers from some of the provisions of the Communications Act. Such carriers are known as "connecting carriers." The determination of connecting carrier status involves a range of factual determinations with respect to the operations and relationships of a particular carrier.[8] Moreover, the Commission determined shortly after the Communications Act was adopted that any telephone company claiming connecting carrier status has the burden of establishing that it is covered by the exemption.[9]

9. In the instant proceeding, although Contel states that it "would appear to be operating" as a connecting carrier under the centralized equal access plan it proposes,[10] its desire to resolve its status under the Act is ambiguous.[11] Moreover, Contel has not proffered a showing that would permit us to make the determinations noted above. Since Contel has failed to provide the requisite showing, we are unable to conclude that it is a connecting carrier. This does not foreclose Contel from filing in the future a petition for declaratory ruling on its status under the Communications Act.

10. NTCA's argument that the Commission has no authority to grant Contel's Section 214 application is predicated on its claim that Contel is a connecting carrier.[12] NTCA's failure to demonstrate that Contel has connecting carrier status does not, however, justify a finding that Contel does not have connecting carrier status. The Commisssion has previously concluded that such status questions should normally be determined in response to a petition for declaratory ruling and that such a petition is properly filed by the affected carrier because its rights and responsibilities under the Act may be delineated thereby, or by a state commission with common carrier jurisdiction over that carrier, because such commission's regulatory powers might indirectly be affected by the carrier's status under the Act.[13] Of course, should Contel choose to file a declaratory ruling petition seeking a determination of its status, NTCA or other interested parties who wish to discuss the question may file comments in response to the petition.

B. ***The Public Interest.***

11. *Comments.* Petitioners claim that Contel has not demonstrated a relationship between its desire to reduce its equal access conversion costs and the extension of its operation beyond Seymour to Indianapolis. They state there is no evidence that the proposed line will be used. They argue that elimination of this needless routing into Indianapolis would save Contel the proposed annual leasing fees, and that the leasing of the additional lines does not serve the public interest as is required of Section 214 applications.

12. Even if the line does lead to IXC entry, TMC argues that Contel fails to show how the introduction of additional IXC competition will impact existing resale IXCs operating in the area, and how the public interest will be served if the local IXCs are bypassed by larger IXCs. Because the region's subscriber base is small, TMC believes the costs of Indianapolis IXCs' entry to south central Indiana will exceed their revenues, and the customer base will be further fragmented. This, TMC warns, could lead to weakened IXCs, which might lead Contel itself to enter the intraLATA and interLATA markets, with its future competitors subsidizing its access to Indianapolis. While it claims it does not object to IXC entry into the market, TMC objects to their entry through the Indianapolis link being subsidized by existing competitors. TMC argues that IXCs not benefiting from these subsidies and who have limited resources would be eliminated from the market. Because all IXCs, including TMC, will pay Contel for its equal access conversion costs, which include the line extension to Indianapolis, new IXCs will access this market without incurring the same cost burden as TMC.

13. TMC also alleges that Contel's proposal does not warrant application of the Commission's pro-competitive policies. While it is not opposed to more competition, TMC states competition functions properly only if there is no subsidization and there is no artificial market reshaping by a carrier that is both a monopoly provider of essential service and a direct competitor.

14. TMC argues that Contel's planned extension to Indianapolis will result in TMC subsidizing TMC's potential competitors through higher transport rates and an equal access rate element for facilities that TMC does not need. TMC claims antitrust issues are involved because Contel is attempting to monopolize through the use of predatory investments. Citing *Photovest Corp. v. Fotomat Corp.*, 606 F.2d 704 (7th Cir., 1979), *cert. denied*, 445 U. S. 917 (1980),[14] TMC also accuses Contel of attempting to devalue TMC's enterprise by attracting Indianapolis-based IXC carriers.

15. According to TMC, it is inappropriate for Contel to rely on *Indiana Switch* as precedent for its proposal because there are factual and other differences between that decision and Contel's proposal. First, it asserts, the Commission did not establish a blanket policy favoring similar proposals. Each proposal must stand on its own. (*Indiana Switch* at para. 20.) Second, it maintains that *Indiana Switch* is distinguishable in that, there, 27 independent telephone companies participated in a consortium to construct a network to meet their particular needs, IXCs were offered access to 70,000 subscriber lines at a centralized location, and the network ownership and control were under a separate corporate organization. TMC further argues that many of the competitive concerns present in this case were absent in *Indiana Switch*.

16. In response, Contel states that its routing between Seymour and Indianapolis "is essential to attract interexchange carrier (IXC) competition and its benefits to [Contel] exchanges and subscribers." Opposition, p.4. Facilitating the availability of competitive IXC services through an access location outside of its telephone service area is, in Contel's view, a reasonable and appropriate network management decision and well within its business discretion. In *Indiana Switch*, it asserts, the Commission noted that independent telephone companies (ITCs) are under no regulatory restriction as to where they must deliver traffic to IXCs. *Id.* at paras. 16, 17 and 21. Contel argues that IXCs are not likely to interconnect with its system if it is not extended to Indianapolis. Besides, it contends, "a carrier need not propose the least expensive alternative for a facilities program." *Indiana Switch, supra.* In any event, it believes that the Indianapolis access site has been cost justified and it will aid the provision of IXC services to its rural subscribers who otherwise might be denied such benefits.

17. Contel contends that petitioners' allegations are nothing more than a plea for protection against competition. Contel Opposition, p. 7. Contel relates that TMC's and Saverline's presence in the subject area are limited, noting that as of August 7, 1987, combined, they could reach only 41 of the 69 exchanges encompassed by the proposal. It further explains that MCI, and ultimately US Sprint, serves its local exchange area via WATS lines (which require the dialing of a substantial number of extra digits and do not afford the same quality as an equal access connection) but to its knowledge no Contel subscriber has utilized MCI's service. Contel argues that TMC advocates equalizing competition, which is not a Commission policy. Indeed, Contel notes, the IXCs introduced to its service area possess greater economies of scale than TMC, which Contel believes will benefit its subscribers. In Contel's view, TMC has not established that there is sufficient IXC competition in Contel's exchanges to warrant denying the subject proposal.

18. Contel believes that its plans for entering the interexchange market are irrelevant to the Commission's review and action on its application. It explains it does not have plans to enter the interexchange market, but if it formulates plans it will advise the Commission and comply with appropriate regulations.

19. Contel maintains that establishing IXC competition in its exchanges, satisfying consumers' demand and increasing the use and value of Contel's system are compelling reasons for its extension to Indianapolis. TMC's exposure to competition by this plan does not mean there is predatory intent, Contel adds. TMC's complaint regarding the charges it would have to pay under Contel's proposal is not properly raised, according to Contel. Contel, citing *Indiana Switch* at para. 20, suggests the issue should be raised when it files a tariff. Finally, Contel argues that *Photovest* is inapposite because neither Contel nor TMC are in a franchisor/franchisee relationship (as were the parties in *Photovest).* In Contel's view, its service area is underserved by IXCs and its proposal is designed to remedy that situation, as well as enhance the value of its own exchange access facilities. Contel urges that TMC fails to advance evidence of any "predatory intent."

20. According to Contel, "[t]he factual findings and policy judgments reached by the Commission in [Indiana Switch Access Division] provide both pertinent and strong support for the approval of CTC of Indiana plan." Contel Opposition, p. 16. Contel contends that the basis for the Commission's decision in *Indiana Switch* was its desire that rural telephone subscribers, as well as their counterparts in urban areas, enjoy the benefits of IXC competition. The bottom-line of the *Indiana Switch* decision, Contel concludes, is the Commission's recognition that, absent centralized equal access arrangements, rural area telephone subscribers may never experience the benefits of equal access and IXC competition. Thus, it believes TMC fails to make a *prima facie* showing that the subject proposal would not serve the public convenience and necessity.

21. In its reply, TMC asserts that Contel has not demonstrated that there is any substantive evidence of demand for its proposed extension to Indianapolis. According to TMC, Contel apparently rests its public need on a single statement noted in its application, *viz.*, there have been inquiries about service from other IXCs. In TMC's view, this is hardly appropriate support for the investment Contel contemplates. Furthermore, states TMC, there is no indication that the IXCs will actually serve Contel's unserved exchanges or that this sparsely populated area will support the broad competition anticipated by Contel. It concludes "[t]he Commission's competitive policies cannot and will not be served by the introduction of unfair competitive advantage, unilateral market restructuring and subsidized entry. TMC Reply at iii.

22. *Discussion.* In the *Third Report and Order*, 93 FCC 2d 241 (1983), and *Report and Order*, 100 FCC 2d 860 (1985), in CC Docket No. 78-72,[15] the Commission adopted rules and policies designed to implement an equitable compensation plan for use of exchange carriers' facilities, otherwise known as access service.[16] Because of inherent differences in the equipment and size of carriers providing access facilities, the Commission adopted requirements for the larger exchange carriers, *i. e*, the Bell Operating Companies (BOCs) and General Telephone Operating Companies, which differ from those applicable to the generally smaller ITCs. The provision of access service by the BOCs is driven in large measure by the MFJ,[17] which defines exchange access as including the "delivery and receipt of such traffic at a point or points within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC." No similar obligation has been placed on the independent telephone companies, however. During its proceeding addressing equal access schemes for ITCs, the Commission was sensitive to the degree of diversity of end office equipment among ITCs as against the more standardized offices of the BOCs. It considered employing the GTE Consent Decree (CD)[18] as a model to achieve equal access among non-GTE ITCs, but recognized that "different types of equipment (in addition to those specified in the CD) are deployed in the non-GTE end offices."[19] Because of these differences, the Commission decided to:

> . . . establish an implementation schedule that recognizes the following characteristics of the non-GTE sector, which distinguish it from both GTE and the BOCs: (a) the variability in installed [stored program-controlled] equipment types; (b) the predominance of electromechanical equipment: (c) the existence of more severe constraints on capital spending; and (d) the likelihood that demand for equal access service, by customers and [other common carriers] alike, will be less . . . . In so doing, we shall impose time limits in those cases where the end office is equipped with SPC switching and a reasonable request for equal access services exists. Finally, we shall recognize the existence of problems that may be imposed by capital constraints, and the nonstandardization of installed [stored program-controlled] equipment, by adopting an exception mechanism.[20]

23. The Commission's decision never addressed the issue of where the ITCs must deliver traffic or whether they must deliver it to an IXC designated point of presence in a LATA. The Commission's order merely stated that the elements of access services offered by ITCs need be offered to IXCs only to the extent and on the same basis as they are offered to AT&T. No geographic boundaries were imposed. There is no Commission policy or precedent, therefore, that requires us to overrule Contel's decision to extend its equal access system to Indianapolis. There are,

on the other hand, reasons offered by Contel that support Indianapolis as a necessary access point. Consistent with the Commission's finding in the *Report and Order* that the demand for equal access in areas served by independent companies is likely to be less than demand in more urbanized areas (para. 21, *supra*), [21] Contel proposes to lease facilities of less than 40 miles in length to facilitate a point of IXC access in the area's major metropolitan area which is served by a number of IXCs. It argues this will stimulate IXC interest. Extending a point of interconnection for equal access outside a service area to attract IXCs is not a new approach. In *Indiana Switch* and *Iowa Network Access Division* [22] the access and aggregation locations (Indianapolis and Des Moines, respectively) were not located in any of the service areas of the participating local exchange carriers. The Commission considered those proposals and found they would serve the public convenience and necessity. The distinctions TMC draws between the facts of *Indiana Switch* and Contel's proposal are without significance. The Commission has never ruled that centralized equal access arrangements can only be implemented by a consortium of ITCs. Contel's proposal offers benefits similar to those presented in *Indiana Switch*.[23] First, it is likely to bring about equal access and the availability of additional competitive carriers sooner and less expensively than if end offices were converted individually. Second, the aggregation of access lines will make service to the area more attractive to competitive IXCs. Finally, the plan will reduce costs to IXCs because the plan provides transmission facilities to serve the rural exchanges.

24. Information provided by Contel indicates it plans to offer (a) interconnection to all IXCs equal in type and quality to what AT&T will receive; (b) presubscription; and (c) means by which all IXCs will be accessible via a minimum number of digits. Moreover, all IXCs will pay Contel's tariffed rates for its access services. Except for the centrally located switching operation, Contel's proposal does not materially differ from the access services provided by the BOCs. Equal access could be provided by converting each end office of Contel rather than through the proposed scheme. If equal access were provided by converting individual end offices Contel estimates that it would incur an expenditure of approximately16 million. The costs of Contel's proposal (1.3 million switch cost and530,000 annual leasing fees) are much less. Therefore, given that ITCs are not constrained by the geographic operating restrictions imposed on the BOCs by the MFJ, in view of the apparent advantages to sparsely populated communities by the availability of additional competition in the interexchange market to be fostered by Contel's proposal, and given the cost advantage of this scheme over the alternative of individual end office conversion, we find that the public convenience and necessity will be served by grant of this proposal. Under the circumstances of this case, the aggregation of the access traffic in Seymour is not an unreasonable means of providing access service, and providing a point of access at Indianapolis is likely to stimulate IXC interest.

25. We believe that our approval of Contel's proposal should be granted subject to conditions we have imposed in similar cases, *e. g., Iowa Network, supra*. Accordingly, we will condition our authorization on the approval by appropriate state agencies of the Contel network, to the extent state action is required, without modifications that materially affect the relative amounts of inter-and intrastate usage. In the interstate tariff proceeding, we expect Contel to provide information on the technical characteristics and identity of its Seymour tandem switch, including reliable measurements of post-dialing delay and certification of any impact on access to operator services. Further, to ensure that Contel is not shifting costs of spare capacity in the underlying fiber system it leases from its affiliate, we will require Contel to submit semi-annual circuit usage reports. This is essentially the same condition imposed in *Indiana Switch* and *Iowa Network Access Division, supra*, and it will permit interested parties to ascertain the reasonableness of Contel's rates.

26. TMC's argument that the introduction of IXC competition to Contel's service area would not serve the public interest is unsupported. This Commission has established that, generally, competition in the provision of communications services is in the public interest. *See, e. g., Specialized Carriers*, 29 FCC 2d 870 (1971), *aff' d sub nom. Washington Utilities & Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); *MTS and WATS Market Structure*, CC Docket No. 78-72, *Phase I*, 81 FCC 2d 177, 200 (1980), and *Phase II*, FCC 82-515 (1982). Our policy is that Section 214 applications from qualified applicants will be granted for domestic services unless there is some basis to believe that such authorization is likely to produce results that conflict with the goals of the Act. Any entity opposing entry by a new carrier must show that entry will not benefit the public interest. *MTS and WATS Market Structure, supra*.

27. The Commission is aware that its competitive policies may result in some dislocation in the marketplace. However, it believes this is not too high a price to pay for the benefits competition brings. In *Specialized Carriers* at 903, citing *Schaffer Transportation Co. v. United States*, 355 U. S. 83, 91 (1957), the Commission noted that "no carrier is entitled to protection from competition in the continuance of a service that fails to meet a public need, nor, by the same token should the public be deprived of a new and improved service because it may divert some traffic from other carriers." Indeed, the access charge proceeding is founded on the premise that the public is best served by having access to different providers of interexchange service.[24] TMC has not shown that the public in Contel's service area should not enjoy the same access to alternative IXC providers as is enjoyed by the public living elsewhere. TMC's argument that approval of Contel's proposal will likely cause competitive harm that ultimately will adversely serve the public lacks substantive support and is inconsistent with the findings in CC Docket No. 78-72, note 8, *supra*. The possibility that TMC's business may be reduced by the entry of additional IXCs, in and of itself, does not preclude grant of this proposal. As long as the public continues to receive unabated or increased service, the goals of the Act are realized. There has been no probative demonstration that service to the subject area will be impaired. Therefore, TMC's argument must be rejected.

28. Finally, we believe it is premature to conclude that Contel's possible entry as an interexchange carrier would be anticompetitive, or if so what the proper remedies might be. The access rules already provide significant protection to competition by establishing a framework of access for all IXCs at the same rates and terms. Whether additional safeguards might prove necessary at the time Contel does seek to enter the interexchange arena in this region is likely to depend upon the specific factual circumstances that then exist. These possible future problems

should not, in our view, delay the concrete and immediate benefits of providing equal access to Contel's subscribers. For the present, we condition our grant of the requested certification by directing Contel to notify us of its intention to use these facilities to provide interstate service. Such notification must occur prior to Contel's use of the facilities to provide interstate service and should be in the form of an amendment to the present application. This process should ensure that any anticompetitive concerns are addressed. Contel also, of course, should comply with other relevant regulatory requirements.

C. *Hearing.*

29. *Comments.* Finally, TMC urges that if the Commission does not deny the subject proposal, an oral hearing must be held to address subjective factors it claims are known only to Contel. TMC Petition, p. 17. TMC argues that an oral hearing will uncover crucial competitive issues and facts related to the impact Contel's proposal will have on the marketplace and on TMC.

30. Contel responds that the courts have ruled that neither the Communications Act nor the Administrative Procedure Act (APA) requires an evidentiary hearing on a Section 214 application. Contel also states that it has shown that TMC's petition fails to identify specific allegations of fact sufficient to deny its application, which, it claims, cannot be cured with a request for an oral hearing.

31. *Discussion.* The law is well settled that an oral hearing is not mandated by Section 214(a) of the Act. In *ITT World Communications v. FCC*, 595 F.2d 897, 900-01 (2d Cir. 1979), the court stated that Section 214(a) itself includes no procedural requirements [*Cf.* Section 214(d)] and the APA does not require a hearing. It also indicated that "5 U.S.C. § 551(6) & (7) does not make an application under Section 214 subject to an evidentiary hearing since 5 U.S.C. § 554 applies only to 'every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing,' and § 556, so far as it deals with adjudication, applies only when a hearing is required by § 554." *Id. See also United States v. FCC*, 652 F.2d 72, 90 (D.C. Cir. 1980). Incurring the delays and expenses associated with an oral evidentary hearing is not warranted. The record before us is adequate to reach a determination. We therefore deny TMC's request for a hearing.

III. CONCLUSION

32. The Bureau has considered the arguments presented by all the parties. It finds that Contel of Indiana, Inc.'s application is adequate under Part 63 of the rules and that TMC has offered no arguments that warrant denial of the application. Therefore, the Bureau believes that the public convenience and necessity will be served by grant of the application, as discussed herein. The facilities authorized by this decision will be used to provide Indiana rural subscribers with access to different IXCs and a variety of telecommunications services at competitive rates.

IV. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, that the application of Contel of Indiana, Inc. for authorization under Section 214 of the Communications Act of 1934 to lease transmission facilities in the State of Indiana IS GRANTED.

34. IT IS FURTHER ORDERED, that TMC's Petition to Deny IS DENIED.

35. IT IS FURTHER ORDERED, that grant of the application provided for herein IS SUBJECT TO THE FOLLOWING CONDITIONS:

> That Contel of Indiana, Inc. report, in writing to the Chief, Domestic Services Branch, Common Carrier Bureau, on a semi-annual basis (February 1 and August 1), the amount of capacity it has leased from its affiliate for the Columbus to Greenwood line and and from other providers for the Greenwood to Indianapolis line during the previous six month period (July-December, January-June) and compare that with the amount of capacity that is actually furnished to all IXCs in the provision of interstate access services.
>
> That the State of Indiana, if necessary, through the appropriate state agencies, has issued the necessary approvals at the conclusion of any state proceedings relating to the proposal in the subject application without modifications that materially affect the relative amounts of inter- and intra-state usage of the system.
>
> That Contel of Indiana, Inc. submit an amendment to the present application no later than 90 days prior to initiating the use of the subject facilities for provision of interstate service by itself or any affiliated company within the meaning of Section 2 of the Communications Act, 47 U.S.C. § 152.

36. This order is issued under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, and is effective upon its release. Failure of Contel to decline this authorization as conditioned within thirty-one days from the release date will be construed as formal acceptance.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] In its initial filing, Contel proposed to construct a fiber optic cable between Columbus and Greenwood, Indiana and lease fiber facilities between Greenwood and downtown Indianapolis, Indiana (which is outside Contel's service area) to use in conjunction with its existing network to provide equal access service. This arrangement would have cost Contel1 million in construction costs and450,000 annually in leasing expenses. On November 9, 1987, Contel amended its application to reflect its parent corporation's decision to construct the link between Columbus and Greenwood using a separate corporate subsidiary, and that Contel would lease the facilities from that subsidiary.

[2] A tandem switch is an intermediate switch used to interconnect local and toll offices. Engineering and Operations in the Bell System, pp. 691, 695 (Bell Laboratories, 1980).

[3] "To home" means to direct toll calls to a specific toll center or class 4 office. A toll center is a Class 4 office in the hierarchy of toll switching offices, the lowest level toll office. A toll office is a switching office where trunks are interconnected to handle and record charges associated with long distance, or toll calls.

[4] Contel argues that this arrangement will avoid unnecessary duplication and will lower its costs. In addition, it states that the accounting for its affiliate's facilities will be maintained separately from those of Contel.

[5] Exchange Carrier Association Tariff F.C.C. No. 1, pp. 157-159, provides the following definitions:

> Feature Group A access provides line side access to telephone company end office switches with an associated seven digit telephone number for the customer's use in originating communications from and terminating communications to an interexchange carrier's interstate service or a customer-provided interstate communications capability.
>
> Feature Group B access provides trunk side access to telephone company end office switches with an associated uniform 950-0XXX or 950-1xxx access code for the customer's use in originating communications from and terminating communications to an IXC's service or a customer-provided interstate communications capability.
>
> Feature Group D access provides trunk side access to telephone company end office switches with an associated uniform 10XXX access code for the customer's use in originating and terminating communications.

[6] Section 2(b)(2) limits this Commission's jurisdition over "connecting carriers." That section defines such carriers as "any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier. . . . "

[7] 47 U.S.C. §§ 151, 152(a).

[8] *See* Classification of Telephone Companies, 3 FCC 37 (1935); Declaratory Ruling on the Application of Section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies, CC Docket No. 85-197, FCC 85-320, 50 Fed. Reg. 27053 (July 1, 1985) (*Connecting Carrier Order*). For this reason, the Commission has determined that declaratory rulings should be used to remove any uncertainty with respect to a carrier's status. *See Connecting Carrier Order*, 50 Fed. Reg. at 27054.

[9] *See* Intra State Telephone Company, 3 FCC 172 (1935). The case law supports this conclusion. Rochester Telephone Corp. v. United States, 23 F.Supp. 634, 636 (1938, *aff' d* 307 U.S. 1925 (1939).

[10] Contel Application at 2 n.5; Contel Opposition at 3 n.3.

[11] Contel Opposition at 3 n.3 (Contel . . . would not object" to a determination of its status under the Act).

[12] *See* NTCA Comments at 2.

[13] *Connecting Carrier Order*, 50 Fed. Reg. at 27054.

[14] In this case, the Court found that the defendant, by establishing its own facilities in a market it had franchised the plaintiff, was engaging in a scheme to reduce the value of plaintiff's franchise to force plaintiff to sell back to defendant.

[15] Initial Notice, 67 FCC 2d 757 (1978); Supplemental Notice of Inquiry and Proposed Rule Making, 73 FCC 2d 222 (1979); Second Supplemental Notice of Inquiry and Proposed Rule Making, 77 FCC 2d 224 (1980); Report and Third Supplemental Notice of Inquiry and Proposed Rule Making, 81 FCC 2d 177 (1980); and Fourth Supplemental Notice of Inquiry and Proposed Rule Making, 90 FCC 2d 135 (1982).

[16] This service is defined as including "services and facilities provided for the origination or termination of any interstate or foreign telecommunications." *See* Section 69.2(a), 47 C.F.R. § 69.2(a).

[17] Modification of Final Judgment, United States v. American Telephone and Telegraph Company, 552 F. Supp 131 (D.C. Cir. 1982), *aff' d sub* nom. Maryland v. United States, 460 U.S. 1001 (1983).

[18] United States v. GTE Corporation, Civ. Action No. 83-1298 (D.C.C. December 13, 1984).

[19] 100 FCC 2d at 873-74.

[20] *Id.* at 874.

[21] *Id.*

[22] Iowa Network Access Division, DA 88-293, released February 29, 1988.

[23] *See* also id.

[24] 81 F.C.C. 2d at 183.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-293

In re Applications of

Minnie O. Foulk and Renee Ridley Biselli, d/b/a WASHOE SHOSHONE BROADCASTING, A Limited Partnership	File No. BPCT-850328KE
RENO-ELEVEN TELECASTERS	File No. BPCT-850509KH
RENO MINORITY BROADCASTING CORPORATION	File No. BPCT-850509KJ
PAGE ENTERPRISES INC. (KAME-TV)	File No. BMPCT-850509KQ
RENO COMMUNITY BROADCASTING CO. A Nevada Limited Partnership	File No. BPCT-850509KS
NEVADA TELEVISION CORPORATION	File No. BPCT-850509KU

For Construction Permit for a New VHF Television Station at Reno, Nevada

ERRATUM

Released: July 11, 1988

The Review Board *Decision*, FCC 88R-30, released June 20, 1988, which is computer garbled, is corrected as follows:

Paragraph 12, the *Ponce Television Corporation* citation which now reads as "1180-88" should read "1180-81"

Paragraph 12, the quote from *Ponce Television Corporation* continues from the citation to the end of paragraph 12 and should be indented.

Paragraph 15, line 3, the word "McDonalds" should read "McDonald's"

Paragraph 40, 4th line following the quotation from *Gilbert Group, Inc.*, insert closed quotation marks after the word "poor"

Paragraph 55, line 6, insert the words "File No." before the letters "BMPCT"

Concurring Statement, line 2 of heading, the word "CHAIRMEN" should read "CHAIRMAN"

Concurring Statement, 2nd paragraph, line 7, insert a comma after the citation "88-134"

Concurring Statement, 2nd paragraph, line 8, insert comma after year "1988"

Concurring Statement, 2nd paragraph, line 16, change the hyphenated word "nov-voting" to "non-voting"

Concurring Statement, 2nd paragraph, line 17, change the word "aplication" to "application"

Concurring Statement, 2nd paragraph, line 20, change the word "of" to "to"

BY DIRECTION OF THE REVIEW BOARD

Allan Sacks
Chief for Law

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-331

In the Matter of

Amendment of Section 73.202(b), RM-6356
Table of Allotments,
FM Broadcast Stations.
(Duluth, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 10, 1988; Released: July 13, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Minnesota Public Radio, (petitioner), requesting the allotment of Channel *247C2 to Duluth, Minnesota and its reservation for noncommercial educational use as that community's eighth FM service. Petitioner submitted information in support of the proposal and states its intention to apply for the channel, if allotted.

2. Generally, noncommercial educational stations operate within the educationally reserved portion of the spectrum (channels 201-200). However, exceptions have been made in cases where the channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican) or potential interference to operation on VHF Television Channel 6. Here, potential interference to Station KBJR-TV, Channel 6, Duluth, Minnesota, appears to justify the reservation on a commercial channel for noncommercial educational use.[1] Therefore, the allotment and reservation of a commercial channel appears to be the only way to provide an additional noncommercial educational channel to Duluth.

3. We believe the public interest would be served by proposing to allot Channel *247C2 to Duluth, Minnesota, and reserve the channel for noncommercial educational use. The channel can be allotted to Duluth in compliance with the Commission's minimum distance separation requirements.[2] Since Duluth is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government is required for this allotment.

4. In view of the foregoing, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following community:

City	Channel No. Present	Proposed
Duluth, Minnesota	225C1, 235C, 239C1, 225C1, 235C, 239C1, 255C1, 269A, 277C1, *247C2, 255C1, 269A, 286C1	277C1, 286C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 2, 1988,** and reply comments on or before **September 19, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David G. Rozzelle
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(Counsel for the petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] KBJR-TV is actually licensed to the adjacent city of Superior, Wisconsin, but is located in Duluth.

[2] The coordinates for Channel *247C2 at Duluth are 46-47-00 and 92-06-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-330

In the Matter of

Amendment of Section 73.202(b),	RM-6210
Table of Allotments,	RM-6304
FM Broadcast Stations.	
(Gadsden and Holly Pond, Alabama)	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 7, 1988; Released: July 13, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers two separately-filed petitions for rule making herein. The first, filed on behalf of Ron Hale (Hale), seeks the allotment of Channel 238A to Gadsden, Alabama, as that community's second local FM service (RM-6210). The second proposal, filed on behalf of American Communications and Marketing, Inc. (ACMI), requests the allotment of Channel 238A to Holly Pond, Alabama, as that community's first local broadcast service. Each petitioner expressed an intention to apply for the channel, if authorized.

2. A staff engineering analysis has determined that Channel 238A can be allotted to Gadsden (pop. 47,565)[1] consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules,[2] or to Holly Pond (pop. 493), [3] with a site restriction 2.6 kilometers (1.6 miles) south[4] to avoid short-spacing to Station WSM-FM, Channel 238C, Nashville, Tennesssee.[5] Channel 238A cannot be allotted to both communities since the proposals are separated by a distance of 56.8 kilometers (35 miles), whereas a minimum distance of 105 kilometers (65 miles) is required between co-channel Class A allotments. Therefore, the proposals must be comparatively considered. Accordingly, we shall provide each proponent an opportunity to demonstrate in comments herein why its community should be preferred. In this regard, the parties should be guided by the allocation criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Additionally, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

3. In consideration of the above, the Commission seeks comments on the optional proposals to allot Channel 238A to either Gadsden or Holly Pond, Alabama, as a second FM or first local broadcast service, respectively. Accordingly, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No. Present	Proposed
Gadsden, Alabama	279C	238A, 279C
	or	
Holly Pond, Alabama	--	238A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 2, 1988,** and reply comments on or before **September 19, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, as follows:

Ron Hale
5457 Woodford Drive
Birmingham,AL 35243
(Pro se)

Gary S. Smithwick,Esq.
Baraff, Koerner, Olender
& Hochberg, P.C.
2033 M Street, N.W.
Suite 203
Washington, DC 20036
(Counsel for American Communications
and Marketing, Inc.)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.(

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Population figure was taken from the 19080 U.S. Census.

[2] This determination is based on the use of city reference coordinates of 34-01-06 and 86-01-00.

[3] Population figure was taken from the 1988 Rand McNally Commercial Atlas and Marketing Guide.

[4] Reference coordinates at the restricted site are 34-09-03 and 86-36-39.

[5] Reference coordinates at the licensed site of Station WSM-FM are 36-08-27 and 86-51-56.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-329

In the Matter of

Amendment of Section 73.202(b), RM-6355
Table of Allotments,
FM Broadcast Stations.
(Boonville, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 10, 1988; Released: July 13, 1988

By the Deputy Chief, Policy and Rules Division:

1. Big Country of Missouri, Inc. (petitioner), has filed petition for rule making seeking the substitution of FM Channel 257C2 for Channel 257A at Boonville, Missouri. Petitioner also requests modification of its license for Station KDBX-FM, Channel 257A, to specify operation on Channel 257C2.

2. A staff engineering analysis has determined that Channel 257C2 can be allotted to Boonviile consistent with the minimum distance spacing requirements specified in Section 73.207 of the Commission's Rules at the site specified by the petitioner. Petitioner has specified a site 26.8 kilometers (16.7 miles) southeast of the community.[1]

3. In view of the above and the fact that the proposal could provide a wide coverage area service to Boonville, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Boonville, Missouri	257A	257C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 2, 1988,** and reply comments on or before **September 19, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee W. Shubert
Haley, Bader & Potts
2000 M Street, N.W.
Suite 600
Washington, D.C. 20036-4574
(Counsel to the petitioner)

Big Country of Missouri, Inc.
Richard Billings, President
KWRT/KDBX-FM
Radio Hill Road
Boonville, Missouri 65233

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 257C2 at Boonville are 38-46-29 and 92-33-22.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-478

In the Matter of

Amendment of Section 73.606(b),	RM-6019
Table of Allotments,	RM-6296
Television Broadcast Stations.	
(Roseburg and Canyonville, Oregon)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 7, 1988; Released: July 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of KMTR, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 6699 (1987), proposing the allotment of UHF TV Channel 36 to Roseburg, Oregon, as the community's second local television outlet. Comments and reply comments were filed by the petitioner and by Robert W. Larson d/b/a Gee Jay Broadcasting Inc. (Gee Jay). Gee Jay opposed the allotment at Roseburg and instead proposed the allotment of Channel 36 to Canyonville, Oregon, as the community's first local service.[2]

2. As stated in the *Notice*, Roseburg is located within the minimum co-channel separation distance (164 miles actual vs. 175 miles required) to Portland, Oregon, one of the communities affected by the Commission's freeze on the acceptance of construction permit applications for vacant channels. *See Order*, 52 FR 28346, July 29, 1987. While the *Notice* recognized that Channel 36 can be allotted to Roseburg in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, it went on to state that if the petitioner expressed an intention to specify a site at least 11 miles south of Roseburg the allotment might not be affected by the freeze on applications for new stations in the Portland area.

3. In its comments, petitioner reiterates its intention to apply for Channel 36 if allotted to Roseburg. In addition, it states that it has determined that sites are available which would comply with the required mileage separation to Portland and that it is willing to specify such a site in its application for a construction permit.

4. We believe the public interest would be served by allotting Channel 36 to Roseburg, Oregon, since it could provide the community with its second local television service. Channel 36 can be allotted to Roseburg in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[3] However, any application which is filed for this channel which does not specify at least a 175 mile separation to Portland, Oregon, may not be accepted for filing if the Commission's freeze on such applications is still in effect.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 26, 1988,** the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Roseburg, Oregon	4+, 36

6. IT IS FURTHER ORDERED, That the counterproposal filed by Gee Jay Broadcasting Inc. (RM-6296) requesting the allotment of Channel 36 to Canyonville, Oregon, IS DISMISSED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Canyonville has been added to the caption.

[2] Public Notice of the counterproposal was given on March 16, 1988, Report No. 1716. However, Gee Jay in reply comments withdrew its counterproposal and supported the allotment at Roseburg. Since no other party has expressed an interest in use of the channel at Canyonville, the counterproposal and comments thereto will not be given any further consideration.

[3] The coordinates for this allotment are North Latitude 43-12-54 and West Longitude 123-20-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-469

In the Matter of

Amendment of Section 73.202(b),	RM-5485
Table of Allotments,	RM-5759
FM Broadcast Stations.	RM-5760
(Hilton Head Island	RM-5761
and Bluffton, South Carolina,	
and Darien, Georgia)	

SECOND REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 10, 1988; Released: July 13, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the *Further Notice of Proposed Rule Making*, 2 FCC Rcd 6652 (1987), requesting comments on alternative proposals for adjacent and non-adjacent channel upgrades at Hilton Head Island and Bluffton, South Carolina, or to deny the channel upgrades but allocate Channel 300C2 to Hilton Head Island as the community's third local FM service, as follows:

City	Channel No. Present	Proposed
Option I		
Bluffton, South Carolina	296A	295C2
Hilton Head Island, South Carolina	288A, 292A	291C2, 300C2
Option II		
Hilton Head Island, South Carolina	288A, 292A	288A, 292A, 300C2

The Commission, at the request of Jesse N. Williams, Jr. (Williams) originally proposed the substitution of Channel 291C2 for Channel 288A at Hilton Head Island, South Carolina, the modification of its construction permit for Station WTOI accordingly, and the modification of Hilton Head Broadcasting Corp.'s license for Station WHHR-FM, Hilton Head Island, from Channel 292A to Channel 300A (WHHR).[1] *See Notice of Proposed Rule Making*, 52 Fed. Reg. 2565, published January 23, 1987. In response, counterproposals were filed by WHHR, requesting the modification of its license to specify Channel 291C2 and the modification of Williams' permit to specify Channel 300A or Channel 300C2, and by Dohara Associates (Dohara), permittee of Station WOLW, Channel 296A, Bluffton, South Carolina, requesting an adjacent channel upgrade to specify operation on Channel 293C2. In addition, Clarence E. Jones filed counterproposal to allocate Channel 300C2 to Darien, Georgia, in lieu of Channel 300A at Hilton Head Island.[2] Comments in support of Option I of the *Further Notice* were filed by Island Communications (Island), successor to Williams, Dohara, WHHR, and Mattox-Guest Broadcasting, Inc. (Mattox-Guest), licensee of Station WKUB(FM), Blackshear, Georgia. [3] Island also filed a Petition for Limited Reconsideration of the *First Report and Order*. No other comments or reply comments were received.

2. Island, in both its reconsideration request and comments, supports the allocation of two Class C2 channels to Hilton Head Island, but to avoid a delay in the provision of improved service to the area states that it is willing to have its construction permit modified to Channel 300A, should the Commission decline to modify both stations to Class C2 channels. However, its acceptance of this modification is conditioned upon the Commission leaving in force the 23.9 kilometer (14.8 mile) southwest site restriction on Channel 299C2 at Darien so that Island is not foreclosed from subsequently seeking an adjacent channel upgrade to Channel 300C2. Dohara and WHHR support the modification of Island's Station WIJY and urge the modification of their stations to specify operation on Channels 295C2 and 291C2, respectively. Mattox-Guest also supports Option I since it would delete Channel 288A from Hilton Head, thus permitting the allotment of Channel 287A to Richmond Hill, Georgia, which in turn would permit the allotment of Channel 286C2 to Blackshear, Georgia. The allotment of Channel 286C2 to Blackshear is the subject of a Petition for Reconsideration in MM Docket No. 86-294.

3. We believe the public interest would be served by the adoption of Option I since it could provide the Hilton Head and Bluffton areas with expanded radio service. As stated in the *Further Notice*, Channels 291C2 and 300C2 can be allotted to Hilton Head Island in compliance with the Commission's minimum distance separation requirements and can be used at the licensed site of Station WHHR and the site specified in Station WIJY's construction permit. We note that five of the nine applicants for Channel 299C2 at Darien, Georgia, failed to specify sites which would protect the proposed use of Channel 300C2 at Hilton Head Island. Parties were on notice that Channel 300C2 might be allotted to Hilton Head Island at the site specified in Station WIJY's construction permit. Thus, we consider these sites to be only a preference by the applicants and therefore they should not take precedence over the upgrade of Station WIJYU. As a result, the non-conforming applicants will be served with a copy of this *Order* to afford them an opportunity to amend their applications to specify a conforming site. This may be achieved without loss of "cut-off" status since no upgrade in the class of channel will result. Channel 295C2 can be allocated to Bluffton in compliance with the Commission's minimum distance separation requirements and can be used at Station WLOW's present transmitter site, but use of the channel at the site specified in its pending application (BMPH-871110NS) would cause a 3 kilometer short-spacing to Station WCLA-FM, Channel 296A, Claxton, Georgia.[4]

4. In accordance with Section 1.420(g) of the Commission's Rules, we shall also modify the permit of Station WIJY to specify non-adjacent Channel 300C2 since there

were no other expressions of interest in use of the channel, the license of Station WHHR to specify adjacent Channel 291C2, and the permit of Station WLOW to specify adjacent Channel 295C2.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Bluffton, South Carolina	295C2
Hilton Head Island, South Carolina	291C2, 300C2

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Dohara Associates for Station WLOW, Bluffton, South Carolina, the license of Hilton Head Broadcasting Corp. for Station WHHR-FM, Hilton Head Island, South Carolina, and the permit of Island Communications, Inc. for Station WIJY, Hilton Head Island, South Carolina, are MODIFIED, effective **August 26, 1988,** to specify operation on Channels 295C2, 291C2 and 300C2, respectively, in lieu of Channels 296A, 292A and 288A, respectively, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order, the licensee and permittees shall submit to the Commission a minor change application for a construction permit (Form 301).*

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

Order by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following applicants for Channel 299C2 at Darien, Georgia:

Fred Gladstone
P.O. Box 434
Darien, Georgia
31035
(ARN-871224MD)

MMC Partnership
233 Georgia Street
St. Simons Island, Georgia
31522
(ARN-871228MK)

Resort Communications
12 Abbott Andrews Terrace
Brunswick, Georgia 31520
(ARN-871228MJ)

Altamaha Broadcasting
706 Suncrest Boulevard
Savannah, Georgia 31410
(ARN-871223MO)

Intermart Broadcasting Golden Isles, Inc.
P.O. Box 2696
Jacksonville, Florida 32203
(ARN-871223MP)

8. IT IS FURTHER ORDERED, That the Petition for Partial Reconsideration filed by Island Communications, Inc. IS DISMISSED AS MOOT.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The call letters for Station WTOI have been changed to WIJY.

[2] By *First Report and Order* in this proceeding, the Commission allocated Channel 299C2 to Darien, Georgia, 2 FCC Rcd 6049 (1987).

[3] The separate comments filed by Christine Harvel and Joseph Bahr are unacceptable since they did not serve the petitioner with a copy of their pleadings in violation of the Commission's *ex parte* and procedural rules. *See* 47 CFR Sections 1.1201(g), 1.1207(d), 1.1229 and 1.229 (1987). *See* also Section 1.420(a) and Appendix to the *Further Notice of* Proposed Rule Making.

[4] Stations WHHR, WIJY and WLOW each specify the same transmitter site in their current license or construction permit. The coordinates of this joint transmitter site are North Latitude 32-09-39 and West Longitude 80-45-49.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-64

In the Matter of

Amendment of Section 73.202(b), RM-6184
Table of Allotments,
FM Broadcast Stations.
(Bolivar and Ava, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 10, 1988; Released: July 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, FCC Rcd. (1988), proposing the substitution of FM Channel 290C2 for Channel 292A at Bolivar, Missouri. The *Notice* was issued in response to a petition filed by KYOO Broadcasting Company (petitioner). Petitioner also requested modification of its license for Station KYOO-FM to specify operation on the higher class channel. To accommodate petitioner's proposal, it is necessary to delete Channel 290A at Ava, Missouri. Comments and reply comments were filed by petitioner reaffirming its interest in Channel 290C2 at Bolivar. No other comments were received.

2. We believe the public interest would be served by the substitution of FM Channel 290C2 for Channel 292A at Bolivar, since it could provide the community with its first wide coverage area FM service. The substitution can be made in compliance with the minimum distance separation requirements of the Commission's Rules at a site 26.3 kilometers (16.3 miles) southeast of the community.[1] As indicated in the *Notice* to accommodate the channel substitution at Bolivar, it is necessary to substitute Channel 222A for Channel 290A at Ava, Missouri.[2] Channel 290A was allocated to Ava in MM Docket 84-231 and made available for application in Window No. 30. Corum Industuries, Inc. is the applicant for Channel 290A at Ava (870910NI) and filed a letter in this proceeding agreeing to the substitution of channels. The substitution at Ava can be accomplished in compliance with the minimum distance separation requirements at the current application site for Channel 290A. Petitioner has indicated a willingness to reimburse the applicant for Channel 290A at Ava for all reasonable costs involved in changing frequencies. Therefore, we shall substitute FM Channel 222A for Channel 290A at Ava, Missouri and in accordance with Commission policy, retain the applicant's filing protection for Channel 290A when it amends to specify Channel 222A, since the class of channels are equivalent. *See Phillipsburg, Kansas*, 48 FR 10844 (1988).

3. We have authorized a modification of petitioner's license for Station KYOO-FM, Bolivar, Missouri, to specify operation on Channel 290C2 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Bolivar, Missouri	290C2
Ava, Missouri	222A

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KYOO-FM, Bolivar, Missouri, IS MODIFIED TO SPECIFY operation on Channel 290C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The *Notice* specified a site restriction 20.9 kilometers (13 miles) northeast of Bolivar. Petitioner, in comments, requested a site restriction 26.3 kilometers (16.3 miles) southeast. The new coordinates for Channel 290C2 at Bolivar are 37-25-40 and 93-13-40.

[2] The coordinates for the substitution at Ava are 36-55-48 and 92-39-19.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-14

In the Matter of

Amendment of Section 73.202(b), RM-6099
Table of Allotments,
FM Broadcast Stations.
(Batesville and Charleston,
Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 10, 1988; Released: July 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers the *Notice of Proposed Rule Making*, 3 FCC Rcd. 530 (1988), issued in response to a request filed jointly by Batesville Broadcasting Company (Batesville Broadcasting) and Charleston Broadcasting Company, Inc. (Charleston Broadcasting). Batesville Broadcasting proposed the substitution of FM Channel 263C2 for Channel 240A at Batesville and modification of its license for Station WBLE, to specify operation on Channel 263C2. Charleston Broadcasting proposed the substitution of FM Channel 239A for Channel 232A at Charleston, Mississippi and modification of its license for Station WTGY to specify Channel 239A. Petitioners filed joint comments and reply comments restating their interest in the respective channel substitutions. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 263C2 for Channel 240A at Batesville, Mississippi, since it could provide the community with its first wide coverage FM service. Channel 263C2 can be allotted to Batesville in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 17.7 kilometers (11 miles) northeast of the community.[1] Also, we have authorized a modification of petitioner's license for Station WBLE, Batesville, Mississippi, to specify operation on Channel 263C2 in accordance with Section 1.420(g) of the Commission's Rules since no other expressions of interest have been received. *Modification of FM Broadcast Station Licenses*, 48 FCC 2d 916 (1984). In addition, we shall substitute Channel 239A for Channel 232A at Charleston, Mississippi and modify the license of Station WTGY to specify Channel 239A in lieu of Channel 232A. The substitution can be made at Charleston in compliance with the Commission's minimum distance separation requirements with a site restriction 5.9 kilometers (3.7 miles) southwest of the community provided Channel 240A is deleted from Batesville, Mississippi.[2]

3. We have authorized a modification of Batesville Broadcasting's license for Station WBLE, Batesville, Mississippi, to specify operation on Channel 263C2 in accordance with Section 1.420(g) of the Commission's Rules.

4. As discussed above, we find the substitution of Channel 263C2 for Channel 240A at Batesville, Mississippi and the substitution of Channel 239A for Channel 232A at Charleston, Mississippi, to be in the public interest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include the communities listed below:

Community	Channel No.
Batesville, Mississippi	263C2
Charleston, Mississippi	239A

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WBLE, Batesville, Mississippi, IS MODIFIED TO SPECIFY operation on Channel 263C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the license of Station WTGY, Charleston, Mississippi, IS MODIFIED, effective **August 26, 1988,** to specify operation on Channel 239A in lieu of Channel 232A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license BLH-871217 except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-871217 except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 263C2 at Batesville are 34-25-26 and 89-48-47.

[2] The coordinates for Channel 239A at Charleston are 33-58-43 and 90-06-47.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-13

Amendment of Section 73.202(b) RM-6110
Table of Allotments,
FM Broadcast Stations,
(Paynesville, Minnesota)

ERRATUM

Released: July 12, 1988

On June 27, 1988, the Commission's Mass Media Bureau released a Report and Order (DA 88-935) in the captioned proceeding. This document corrects the date upon which the window period for filing applications will close to read September 14, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-278

In the Matter of

Amendment of Section 73.202(b), RM-5714
Table of Allotments,
FM Broadcast Stations.
(Agana, Guam)

ERRATUM

Released: July 12, 1988

On June 28, 1988, the Commission's Mass Media Bureau released a Report and Order (DA 88-934) in the captioned proceeding. This document corrects the date upon which the window period for filing applications will close to read September 14, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

The Stockholders of SPANISH INTERNATIONAL COMMUNICATIONS CORPORATION (Transferor)	File Nos. BTCCT-860819KE-KI BTCTT-860819KJ-KN 002588-DSE-TC-86
and	
SICC HOLDING CORP. (Transferee)	
For Transfer of Control of Spanish International Communications Corporation	
BAHIA DE SAN FRANCISCO TELEVISION COMPANY (Assignor)	File No. BALCT-861211KZ
and	
SICC ACQUISITION CORP. (Assignee)	
For Assignment of License of Television Station KDTV(TV), San Francisco, California	

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 1988; Released: July 13, 1988

By the Commission: Commissioner Dennis concurring and issuing a statement at a later date.

1. The Commission has under consideration the June 12, 1987, decision of the Mass Media Bureau (Bureau) granting the above-captioned applications. *See Spanish International Communications Corporation*, 2 FCC Rcd 3962 (1987) (Bureau's Decision). Applications for review of that decision have been filed pursuant to Section 1.115 of the Commission's Rules, by Susan M. Jaramillo (Jaramillo); The Coalition for the Preservation of Hispanic Broadcasting (Coalition); Hispanic Broadcasting Limited Partnership (HBLP); and TVL Corporation (TVL) (collectively referred to as the petitioners).[1]

2. HBLP did not participate in the transfer and assignment proceedings before the Bureau, but is a participant in the Spanish International Communications Corporation (SICC) and Bahia de San Francisco Television Company (Bahia) broadcast license renewal proceedings. In those proceedings, which are currently on appeal, the Commission upheld the Review Board's decision approving a settlement agreement of a hearing that led to the filing of these applications. *Spanish International Communications Corp.*, 1 FCC Rcd 92, *recon. denied*, 1 FCC Rcd 844 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 3336 (1987), *appeal pending sub nom. Coalition for the Preservation of Hispanic Broadcasting v. F. C. C.*, No. 87-1285 (D.C. Cir. filed June 26, 1987) (hereinafter referred to as the renewal proceedings). In the proceeding below, Coalition and TVL, among others, filed petitions to deny the transfer of SICC to SICC Holding Corp., which is controlled by Hallmark Cards Incorporated (Hallmark). Jaramillo filed both a petition to deny the SICC transfer and a petition to deny the application to assign the license of KDTV(TV), San Francisco, California, from Bahia to SICC Acquisition Corp., which is also controlled by Hallmark.[2]

3. The petitioners generally allege that the Bureau's denial of the petitions to deny and the grant of these applications are contrary to applicable federal laws and the public interest. They maintain that the Bureau incorrectly found that the petitioners failed to raise substantial and material questions regarding the settlement agreement approved by the Review Board and subsequently upheld by the Commission, and/or the qualifications of the parties to these applications. Therefore, they urge that the Commission reverse or modify the Bureau's decision granting the applications. In separate opposition pleadings, both Hallmark and Bahia challenge, among other things, the standing of certain parties and/or the sufficiency of their pleadings. However, in the exercise of our discretion, we will address below the matters raised in the applications for review. Moreover, on the basis of our examination, we conclude that the Mass Media Bureau fairly considered and properly decided this matter below.

4. *The Settlement Agreement Pleadings.* As previously noted, it was the Commission's affirmance of the Review Board's approval of a settlement agreement in the renewal proceedings which led to the filing of the transfer and assignment applications to place the subject licenses under the control of Hallmark. In their applications for review, the petitioners reiterate the allegations raised below regarding the validity of the settlement agreement, and/or whether its implementation serves the public interest. On its part, HBLP acknowledges that while it did not participate in the transfer proceeding below, the Bureau's decision improperly assumed the validity of the settlement agreement which is the subject of the appeal in the United States Court of Appeals. HBLP contends that the Bureau's decision made no provision for the possibility that the Commission's approval of the settlement agreement would be reversed, thus precluding the subject transfer and assignment. Accordingly, it suggests that the Bureau's grant of these applications is inappropriate pending the Court's ruling on this question or, alternatively, that the Bureau's grant should be conditioned upon the outcome of HBLP's appeal.

5. TVL maintains that the Bureau's decision failed to address the arguments it raised in its petition to deny. Briefly, TVL argued that these applications cannot be granted, not because of a defect in the proposed transferee, but because the settlement agreement and implementing applications are the by-product of an allegedly discriminatory and legally defective sales process which effectively thwarted minority-controlled bidders for the SICC stations. It asserts that during the license renewal proceedings involving these stations, there was pending in

the United States District Court in California a stockholder derivative action instituted by dissident shareholders of SICC. *See* 1 FCC Rcd at 93. As part of a settlement of that case, SICC agreed to sell its stations and, through a court-established sales committee, solicited bids for the stations. TVL specifically challenges the bidding process established thereby. For that reason, it asked in its petition to deny that the SICC-Hallmark transfer be denied, and the Commission issue an order directing SICC to request the United States Court of Appeals for the Ninth Circuit, which currently has jurisdiction over the SICC stockholders' derivative litigation, to remand the matter to the District Court to set aside the bidding process.[3]

6. TVL maintains that because it did not advance these allegations in a pleading in the renewal proceeding before either the Review Board or the Commission, the Bureau's reliance on their decisions regarding the settlement agreement was incorrect and failed to address the specific matters raised in its petition to deny. TVL states that the Review Board acknowledged its petition to deny the then-pending transfer application, but did not specifically address those matters in its reconsideration decision. Nevertheless, the Review Board did generally note that TVL's objection to the selection of a non-Hispanic transferee was similar to other claims before it challenging the transfer of these stations to a nonminority buyer. 1 FCC Rcd at 846-47, n. 21. In that regard, the Review Board held that Section 310(d) of the Communications Act prohibits the Commission from considering whether the public interest might be served by the transfer of the subject licenses to an entity other than the proposed transferee. TVL asserts, however, that with regard to its allegations, these comments cannot be relied upon and must be explicitly overruled by the Commission.[4]

7. As to the merits of its claims, TVL argues that the Bureau also erred when it implied that the relief it seeks is barred by Section 310(d) of the Communications Act. It maintains that it has not specifically sought the transfer of these stations to itself, but rather that it seeks to set aside the selection of Hallmark so that the bidding process can include consideration of a final bid by TVL. In that regard, it asserts that the relief it requests is markedly different from that of the other petitioners; where others seek a ruling to the effect that these stations may only be sold to a minority-controlled entity through distress sale procedures, TVL states that it does not challenge the concept of a full-value sale to the highest bidder, whether or not a minority, in a fair and neutral bidding process. Instead, it maintains, it has requested the Commission to rectify the flawed bidding process and act within its regulatory authority to further a nondiscriminatory sale procedure for these stations. TVL concludes that the Commission has the opportunity to remedy these errors and ensure the ability of parties to compete equally in the acquisition of broadcast properties without violating the provisions of Section 310(d) of the Act.

8. The remaining petitioners generally reassert the allegations raised below, and essentially maintain that the Bureau's decision is contrary to the public interest necessitating Commission review. Jaramillo alleges that the Bureau's action, incorporating the rationale of the Review Board's approval of the settlement agreement and granting the applications, permits SICC and Bahia, which had been found unqualified to hold broadcast licenses, to profit from their wrongdoing. She argues that to allow these licensees to recover substantially more than the Commission's distress sale policy otherwise would allow undermines our application and adjudicatory processes. She suggests that if the sale of these stations is allowed at all, the Commission should require that they be sold at a substantial discount to reprove the licensees for breaching their public trusteeship and deter other licensees from acting in a similar manner. The Coalition, noting that it too is a party to the appeal pending in the D.C. Circuit, asserts that because the Bureau deferred to the Commission's affirmance of the Review Board without addressing allegations raised below with respect to the propriety of the settlement agreement, there was no legal basis to justify the implementation of that agreement. In that regard, the Coalition maintains that this transaction, as implemented, reduces significantly, the number of Hispanic-controlled broadcast licenses in variance with the Commission's policies favoring minority ownership.

9. *Discussion*. On the basis of these allegations, we are not persuaded by the petitioners that the Bureau's findings with respect to the challenged settlement agreement were incorrect or misapplied, and therefore conclude that reversal of the grant of these applications on this ground is not warranted. For the most part, the petitions restate matters which were previously raised and addressed in the renewal proceedings before the Review Board and the Commission. These include allegations with respect to the qualifications of SICC and/or Bahia, and the propriety of the settlement agreement and process. The petitioners do not demonstrate any material error in the Bureau's analysis of the facts then before it nor show how, by deferring to the Review Board and Commission decisions in the renewal proceedings, the Bureau exceeded its authority in granting these applications.

10. We now turn to a matter TVL alleges has been previously raised, but has not been considered; specifically, its claim that the SICC bidding process established under the auspices of the federal court in California was discriminatory in that it excluded a submission by TVL. TVL has sought to challenge the bidding procedure established by the California court in that forum, but has been denied leave to intervene by the court. That denial is currently the subject of TVL's petition for rehearing in the Ninth Circuit. TVL contends that the Commission should act to remedy the alleged discrimination. Such action would be entirely inappropriate and at variance with the Commission's long-standing policy of declining to adjudicate matters properly pending in another forum with the authority to act on the claims presented. Further, the relief sought by TVL is simply beyond our regulatory jurisdiction; the judgment it seeks, if appropriate, is properly the province of the court within which its petition is pending and which is competent to fashion any appropriate remedy. Neither the Bureau's action nor the Commission's decision prejudges, prejudices or otherwise affects the ability of that court to act on TVL's claims. Moreover, we of course have jurisdiction to take any appropriate action in response to any relevant final court order. *See , e. g., Community Television of Southern California v. Gottfried*, 459 U.S. 498 (1983). Accordingly, we find no basis to overturn the Bureau's decision on this ground.

11. We now consider those allegations raised for the first time in the applications for review, and conclude that the Bureau did not err in granting the transfer and assignment applications prior to the resolution of the judicial appeals subsequently filed by the petitioners. Given the fact of the Commission's affirmance of the Review

Board's approval of that agreement in the face of allegations substantially similar to those raised in this proceeding below, the Bureau had neither the grounds nor the authority to address those matters anew or act in a manner inconsistent with the Commission's express opinion. The arguments raised by petitioners in the renewal proceedings were insufficient to dissuade us that permitting the sale of the SICC/Bahia stations as proposed in the settlement agreement would serve the public interest. No new facts or arguments have been advanced here that would cause us to change our earlier conclusion with respect to the settlement agreement. It is well established that rehearing will not be granted merely for the purpose of debating matters again. *WWIZ, Inc.*, 37 FCC 685, 686, *aff'd sub nom. Lorain Journal Company v. F. C. C.*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1967). Moreover, we emphasize that the Bureau's grant of a transfer or assignment amounts only to consent to the specific transaction proposed. In the absence of the issuance of a stay or injunction by a tribunal with proper jurisdiction, the parties to such applications are free to consummate the transaction at their own risk where matters are pending in other forums which may ultimately result in an unfavorable outcome for them. The decision to consummate a transaction in no way prejudices either our ability to take any remedial action later deemed necessary, or the right of petitioners to seek administrative review or judicial appeal to which they may believe they are entitled. Thus, applicants who close a transaction prior to such administrative or judicial review of the underlying grant do so in the exercise of independent business judgments and with the understanding that they may ultimately be required to undo the transaction. *Improvement Leasing Company*, 73 FCC 2d 676, 684 (1979), *aff'd sub nom. Washington Association for Television and Children v. F. C. C.*, 665 F.2d 1264 (D.C. Cir. 1981).

12. *Other Matters*. Jaramillo asserts that the Bureau's decision failed to explain how the grant of these applications will ensure immediate compliance with Commission rules and policies, and remove the "spectre" of unlawful alien influence previously found to exist over these stations. This allegation, raised by Jaramillo below, stems from the fact that, consistent with the settlement agreement, Hallmark will for two years retain the current station managers and will continue network affiliation with SIN, a Spanish-language television network controlled by Mexican citizens whose interrelationship with SICC led, in part, to the renewal proceedings. *See* 1 FCC Rcd at 93-94. Jaramillo contends that Hallmark has not demonstrated these arrangements will not lead to similar concerns regarding unlawful alien influence, and that the Bureau in its action did not require such a showing. She further believes that the Bureau's finding that Hallmark has reserved the ultimate decision-making authority over the operation, management and programming at the stations does not obviate the public interest concerns of excessive alien influence present in this case.

13. The Coalition reasserts the concern that it raised earlier regarding the potential for undue influence over these stations by First Chicago Investment Corporation (FCIC), a wholly owned subsidiary of First Chicago Corporation. As noted in the Bureau's opinion, FCIC will acquire 25 percent of the equity of the licensee corporations in the form of nonvoting redeemable preferred stock and nonvoting common stock in return for providing 25 percent of the financing necessary to carry out these transactions. *See* 2 FCC Rcd at 3962. In its petition to deny, the Coalition argued that the ability of FCIC to participate in these transactions consistent with federal banking laws is subject to the approval of the Board of Governors of the Federal Reserve System, and that the proposed transactions cannot be effectuated in the absence of such approval. It further alleged that neither Hallmark nor FCIC sought appropriate approval prior to the Coalition relaying its concerns to the Board of Governors, and that the Bureau should not grant the subject applications until a review of these matters is completed. In its application for review, the Coalition now argues that because the Bureau is without the authority to make determinations with regard to the applicants' compliance with appropriate federal banking laws, there was no basis for the conclusion that the proposed transferee, as structured, is qualified to be a Commission licensee. Moreover, it maintains that the Bureau's action approving the subject applications under these circumstances contradicts its own finding that the Board of Governors is the proper forum for the resolution of this matter, leaving the Commission without any reasonable ability to conclude that FCIC will not be in violation of federal banking laws. Accordingly, the Coalition contends that until such time that a ruling is made by the Board Governors, the proposed transferee cannot be either legally or financially qualified to be a Commission licensee, rendering the Bureau's grant of these applications a nullity.

14. *Discussion*. The allegations raised by Jaramillo and the Coalition fail to indicate that reversal of the Bureau's grant of these applications is either necessary or appropriate. These matters were raised by the petitioners and addressed by the Bureau. No erroneous conclusions of law or fact have been demonstrated, and no new facts have been shown to exist, which would compel a different conclusion. In response to the petitioners' allegations, the Bureau found no specific and supported factual allegations that raise a substantial and material question as to Hallmark's ability, under the settlement and/or network affiliation agreements, to determine the policies and operation of these stations. We find no basis to conclude even now that the Bureau was in error in finding that nothing apparent or pleaded indicates that Hallmark will do anything other than comport fully with the Commission's rules and policies, or that there will be any improper alien influence. In the absence of any properly supported specific fact to the contrary, we will not presume that these stations will be operated in a manner other than as represented.

15. Similarly, we are unable to agree with the Coalition's argument that the Bureau's grant of these applications is a nullity pending a ruling of the Board of Governors as to the applicants' compliance with federal banking laws. As the Bureau correctly noted, in the absence of a determination by the Board of Governors, the proper forum for adjudicating questions arising under the BHC Act, the Coalition's claim that this transaction may violate that statute remains speculative and provides no basis for Commission action at this time. Moreover, inasmuch as the transfer of control of SICC to Hallmark has been consummated and nothing has come to our attention from the applicants or the petitioners regarding any decision or corrective action taken by the Board of Governors, we find no basis to accept now the Coalition's conclusory concerns regarding compliance with the BHC Act.[5] The Coalition has not alleged or demonstrated that

the grant of these applications will in any way prejudice or prejudge any matters pending before the Board of Governors. As noted earlier, the Bureau's grant merely extends the Commission's consent to the transaction as proposed. The parties then proceed at their own risk when matters pending in other forums might be resolved unfavorably to them, and the Bureau's action does not foreclose remedial action later deemed necessary. The fact remains, as the Coalition ultimately concedes, that the applicants' compliance with federal banking laws is a matter properly left with the Board of Governors. Accordingly, we conclude that no substantial and material question has been raised warranting reversal of the Bureau's action and requiring further Commission inquiry at this time.

CONCLUSION

16. We have reviewed the Bureau's June 23, 1987 *Memorandum Opinion and Order* and conclude that the matter was fairly considered and properly decided. That *Order* fully set forth the reasons supporting that decision and we believe that rationale is justified and in the public interest. The applications for review largely restate allegations previously raised and considered by the Bureau and do not demonstrate any material errors in the Bureau's analysis of the facts or of the authority which supported its decision. Nor do they show how the Bureau's action is in conflict with case precedent or Commission rules or policies. Therefore, we find no basis to reverse or modify that decision.

17. Accordingly, IT IS ORDERED, That the applications for review filed by Susan M. Jaramillo, The Coalition for the Preservation of Hispanic Broadcasting, Hispanic Broadcasting Limited Partnership, and TVL Corporation ARE DENIED, and the Mass Media Bureau's action granting the subject applications IS AFFIRMED.

18. IT IS FURTHER ORDERED, That copies of the *Memorandum Opinion and Order* shall be sent Certified Mail-Return Receipt Requested to the parties to these proceedings.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] The Spanish American League Against Discrimination (SALAD) and The United States Hispanic Chamber of Commerce (USHCC), petitioners below, filed applications for review of the Bureau's decision granting these applications. However, both SALAD and USHCC filed motions to dismiss those pleadings. Inasmuch as the allegations advanced by them have been raised in the other pleadings, and will therefore be addressed in our action of today, we find that it is appropriate to grant the requests. Accordingly, their motions will be granted, and their pleadings are hereby dismissed.

[2] On August 6, 1987, the transfer of control of SICC to SICC Holding Corp. was consummated. The assignment of the KDTV(TV) license was consummated on Feburary 24, 1988.

[3] TVL notes that it sought, and was denied, leave to intervene in the SICC stockholder litigation, a decision affirmed by the Ninth Circuit, which also denied TVL's petition for rehearing. TVL filed a petition for a writ of certiorari in the United States Supreme Court in furtherance of its effort to intervene. That petition was denied by the Court on January 19, 1988.

[4] On July 6, 1987, TVL sought to participate in the SICC renewal proceeding for the first time by filing a petition for reconsideration of the Commission's decision affirming the Review Board's approval of the settlement agreement. In that pleading, TVL requested clarification as to whether the Commission had affirmed, *sub silentio*, the Review Board's position that the relief sought by TVL would violate Section 310(d). However, by an *Order* of the General Counsel, FCC 871-108, released November 5, 1987, TVL's petition for reconsideration was dismissed on the grounds that TVL was not a party to that particular adjudicatory proceeding and, therefore, the allegations raised there would be more appropriately considered in the context of the instant application for review.

[5] Given Hallmark's majority stockholder status and FCIC's nonattributable equity interest, the Coalition does not explain how an adverse finding by the Board of Governors would affect materially Hallmark's ability to operate these stations in the public interest. *See Corporate Ownership Reporting* and Disclosure by Broadcast Licensees, 97 FCC2d 997 (1984), modified on recon., 58 RR2d 604 (1985).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

BEE BROADCASTING ASSOCIATES, A Limited Partnership — File Nos. BMPCT-860616KH, BMPCT-870707KE

For Extension of Time to Construct Station KCTZ(TV), Bozeman, Montana

BEE BROADCASTING ASSOCIATES, A Limited Partnership — File No. BLCT-870908KG

For a License to Cover Construction of Facilities for KCTZ(TV), Bozeman, Montana

BEE BROADCASTING ASSOCIATES, A Limited Partnership (Assignor) — File No. BAPCT-871029KH

and

BIG HORN COMMUNICATIONS (Assignee)

For Assignment of the Construction Permit of Station KCTZ(TV), Bozeman, Montana

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 1988; Released: July 15, 1988

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) the above-captioned application (BMPCT-860616KH) of Bee Broadcasting Associates, A Limited Partnership (BBA), permittee of Station KCTZ, Channel 7, Bozeman, Montana, for an extension of time to construct, which was granted on January 16, 1987; (b) a petition for order to show cause why the construction permit should not be revoked, filed on May 13, 1987, by Karen L. Reier (petitioner);[1] (c) the above-captioned application (BMPCT-870707KE) of BBA for an extension of time to construct, which was granted on July 16, 1987; (d) Ms. Reier's petition to set aside that action filed on July 24, 1987; (e) the above-captioned application for a license to cover the construction of facilities for KCTZ; (f) Ms. Reier's petition to deny that application; (g) the above-captioned application to assign the KCTZ construction permit from BBA to Big Horn Communications (Big Horn); (h) Ms. Reier's petition to deny that application; and (i) related pleadings.

BACKGROUND

2. BBA is a limited partnership whose general partner is Rose Communications, Inc. (Rose). When the subject permit was awarded in January, 1983, Mr. Benny Bee was the President, Chief Executive Officer and sole shareholder of Rose. The KCTZ construction permit initially required construction to be completed by July 17, 1984. On June 18, 1984, BBA sought an extension. On August 7, 1984, the Mass Media Bureau, by the Chief, Video Services Division, denied BBA's extension request after concluding that the failure to build was not due to circumstances beyond the permittee's control. Accordingly, the construction permit was cancelled and the call sign deleted. On September 17, 1984, BBA filed a request for reconsideration of that action, and on November 28, 1984, BBA filed an application to assign the KCTZ construction permit to Eagle Communications, Inc. (Eagle). On January 15, 1986, BBA's construction permit was reinstated after it was determined that BBA was eligible for an automatic grant of an additional six months to construct as a result of the Commission's adoption of a new policy with respect to extension applications. *See Amendment of Section 73. 3598*, 102 FCC2d 1054 (1985). BBA was informed that the new date for completion of construction was July 15, 1986, and that the application to assign the construction permit to Eagle, which had been held in abeyance, would be accepted for filing. During the pendency of that application, on June 16, 1986, BBA filed a second request for an extension of time to complete construction of the KCTZ facilities. On July 11, 1986, BBA amended its extension application to request 9-12 additional months to complete construction of the station in the event of denial of the assignment application.[2]

3. By letter dated January 7, 1987, the Mass Media Bureau, by the Chief, Video Services Division (Bureau), denied the proposed assignment of the KCTZ permit to Eagle.[3] Thereafter, by action of the Bureau on January 16, 1987, BBA's extension application was granted, and its construction permit extended until July 16, 1987.

4. On May 13, 1987, Ms. Reier filed the petition requesting the Commission to order BBA to show cause why its construction permit should not be revoked. In that pleading she alleged that, having failed to assign the construction permit to Eagle, BBA had turned over control of its station to Big Horn (then known as KOUS-TV, Inc.) without the Commission's consent. She asserted that Big Horn, hoping to utilize KCTZ as a satellite of its station KOUS-TV, Hardin, Montana, had become involved in the day-to-day affairs of BBA to ensure that the station was constructed. Ms. Reier also alleged that BBA had misrepresented its intentions to build the station and to acquire equipment, and that the facilities under construction varied from those specified in the KCTZ permit.

5. On May 14, 1987, the permittee filed with the Commission an exchange of correspondence between Thom Curtis, then Vice President of Big Horn, and Mr. Bee, President of Rose, the general partner of BBA. The first document, dated March 23, 1987, reflects an agreement by Big Horn to loan BBA sufficient funds to complete construction of the station in return for receiving an option to purchase a 100 percent interest in KCTZ following its

construction and licensing. The second document, dated April 14, 1987, reflects a further refinement of that agreement, whereby Mr. Curtis would acquire a 49 percent interest in the permittee's general partner, Rose, in return for immediately advancing to equipment suppliers a 25 percent down payment in the amount of100,000 to ensure that construction of the station could go forward. In addition, the agreement between them includes a provision that states that if for any reason the sale to Big Horn is not consummated, Rose and BBA will be held responsible for repayment of funds advanced during the construction. BBA also reported that an option agreement, loan agreement and related security and other instruments to reflect these agreements were being prepared, but that until such formal documents were executed, the parties would not be obligated to go forward.

6. On July 7, 1987, BBA filed its third request for an extension of time to complete construction of the station. It reported progress in construction at the transmitter site, and that necessary equipment had been delivered or was in transit. BBA stated that it expected that a thirty-day extension would be sufficient to enable it to complete construction and tender a covering license application. BBA's application was granted on July 16, 1987, and the KCTZ construction permit was extended through January 1, 1988. However, on the day a public notice was issued reflecting the grant of that application, Ms. Reier filed an informal objection challenging BBA's extension request.[4] On July 24, 1987, Ms. Reier filed a petition to set aside the grant of the extension application pending consideration of the informal objection.

7. On September 8, 1987, BBA filed the subject application for a license to cover the construction of KCTZ's facilities, stating that the station began operating pursuant to program test authority the previous week. Shortly thereafter, Ms. Reier filed a petition to deny that application. She alleges that the license application filed by BBA confirms that the KCTZ facilities differ from the terms of the construction permit, insofar as BBA has installed a different directional antenna than was authorized, resulting in altered coverage characteristics for the station's signal.[5] For these reasons, as well as those set forth in other pleadings, Ms. Reier asserts that operation of KCTZ by BBA would not be in the public interest and that its license application should be denied. In an opposition pleading,[6] BBA not only challenges Ms. Reier's standing to file the various petitions, but also disputes the merits of her charges. It states that it mistakenly submitted an incorrect antenna pattern for the directional antenna it had installed, but that on the basis of an engineering consultant's review, there is no material difference between the correct signal pattern and the pattern shown in its construction permit. Lastly BBA contends that its May 14, 1987, submissions of the correspondence between Messrs. Bee and Curtis refute the petitioner's allegation that there has been an unauthorized transfer of control of the permittee.[7]

8. On October 29, 1987, the subject application to assign the KCTZ construction permit to Big Horn was filed.[8] Ms. Reier filed a petition to deny the assignment application, alleging that facts revealed during the course of this proceeding evidence a *prima facie* showing that an unauthorized transfer of control of KCTZ has taken place, and that Big Horn and/or BBA principals have misrepresented facts, or were lacking in candor, regarding their involvement in the station's construction and operation. In a consolidated opposition, Big Horn and BBA assert, among other things, that none of the allegations advanced by Ms. Reier in the various petitions raise a question as to their forthrightness with the Commission, the merits favoring the grant of these applications, or the qualifications of the parties to the proposed transaction. Accordingly, they contend that the Reier pleadings must be dismissed, the BBA applications granted and the BBA-Big Horn assignment approved.

THE PLEADINGS

9. Before addressing the substantive allegations raised here, we must first note that both BBA and Big Horn raise various questions regarding Ms. Reier's ability to file formal petitions against, and participate in proceedings relating to, certain of the subject applications and/or the procedural sufficiency of her pleadings. However, we believe that the matters she alleges should be examined and resolved. Inasmuch as Ms. Reier's allegations involve the same set of facts that evolved during the construction of KCTZ, we will treat her petitions as informal requests for Commission action. Due to the nature of the allegations, we believe that such treatment will be helpful to address and resolve the matters raised in this case. Moreover, such a course is not inconsistent with Commission practice. For example, BBA correctly observes that an order to show cause, under Section 312 of the Communications Act of 1934, as amended, 47 U.S.C. §312, enables the Commission to institute revocation hearings on its own motion, but does not specifically create rights in third parties, such as Ms. Reier, to file petitions to revoke licenses. Nevertheless, such pleadings have been treated as informal requests for Commission action under that section of the Act. *See , e. g., KSDK, Inc.*, 93 FCC2d 893, 895 (1983). We believe that such an approach is appropriate here. Accordingly, these allegations will be addressed below.

10. *The Petitioner's Allegations*. The petitioner maintains that Mr. Curtis and Big Horn assumed control of KCTZ no later than March 1987 as a prelude to a desired common ownership and operation of that station and KOUS-TV, Hardin, Montana, licensed to Big Horn. Ms. Reier states that on April 10, 1987, an article appeared in a local newspaper which reported that Mr. Bee had entered into a "managerial agreement" with Mr. Curtis, then general manager of KOUS-TV,[9] to build and manage KCTZ. Moreover, she asserts that shortly thereafter, her husband was contacted by an attorney representing Mr. Bee regarding a possible joint venture to put KCTZ on the air, requiring an immediate investment of100,000 to be used to order equipment. In a declaration submitted in the petition for an order to show cause, Mr. Reier avers that he was told that, regardless of his decision, Mr. Bee would soon "move the station" one way or another, and that among those interested were principals of Big Horn. Thereafter, the petitioner learned that an agreement had been reached to sell KCTZ to Big Horn once the station goes on the air, which agreement had not been disclosed to the Commission allegedly to avoid restrictions on the sale of a construction permit. Further, she alleges that equipment for the station was to be ordered "only if KOUS-TV principal Thom Curtis came up with the money for it."

11. As to the construction of KCTZ, the petitioner maintains that it was subsequently discovered that Big Horn, its principals and/or its employees, had arranged for

the acquisition and construction of KCTZ's studios and offices, as well as obtaining local zoning approval for such use; had applied for permission to build an intercity relay system to transmit KOUS-TV's signal to KCTZ; had filed necessary applications on behalf of BBA for auxiliary authorizations to link the KCTZ studio and transmitter; had made loans to BBA;[10] had ordered equipment;[11] and arranged for its Chief Engineer to offer necessary assistance and service. In addition, Ms. Reier states that although the BBA-Big Horn relationship had not yet been disclosed, Big Horn was described alternatively as the "owner of KCTZ" or "in the process of acquiring the construction permit" in some of the auxiliary service applications filed with the Commission in connection with the intercity relay system and studio-transmitter links.

12. The petitioner further alleges that Big Horn had arranged for an ABC network affiliation for KCTZ to operate essentially as a satellite of KOUS-TV. On October 2, 1987, BBA filed KCTZ's ABC network affiliation agreement with the Commission. She contends that review of that document indicates that the affiliation was entered into only because of Big Horn's involvement with KCTZ. She observes that the agreement, dated August 28, 1987, provides that the affiliation will "terminate automatically if [KCTZ] shall cease to be under common ownership with Station KOUS-TV."[12] Moreover, the petitioner notes that under the affiliation agreement, KCTZ will rebroadcast ABC programming aired by KOUS-TV, but will receive no compensation for such network carriage.[13] The petitioner thus argues that these facts demonstrate that ABC is treating, and KCTZ is operating, as a commonly owned satellite of KOUS-TV.

13. During the course of these proceedings, the petitioner filed supplementary materials asserting that information had come to light in another Commission proceeding concerning the role of Mr. Curtis and Big Horn in the construction of KCTZ. That proceeding involved mutually exclusive applicants for a construction permit for a new television station in Billings, Montana, MM Docket No. 86-109. Mr. Curtis is the general partner and 50 percent owner of the successful applicant, BHC Associates, Limited Partnership (BHC), and Big Horn's president, Daniel W. Coon, is a limited partner with the remaining 50 percent ownership interest. The petitioner's husband sought to intervene in that proceeding to reopen the record and enlarge issues to specify the same issues against BHC that have been raised here. Ms. Reier maintains that an opposition pleading filed by BHC in the Billings proceeding contains declarations by Mr. Curtis and J.R. Middleton, Director of Engineering for KOUS-TV, which address and corroborate most of the charges raised here. She states that in his declaration, Mr. Curtis avers that: he proposed to Big Horn's shareholders that they loan BBA sufficient funds to construct KCTZ, telling them that he would be personally involved in that construction; Big Horn would receive an option to purchase 100 percent of the station, but would have no ownership interest in the station until authorized by the FCC; a letter agreement between Big Horn and BBA was reached the day after Mr. Reier met with Mr. Bee's attorney, and as part of that agreement, Big Horn was to provide a100,000 down payment for KCTZ equipment; he and Mr. Middleton negotiated for and ordered equipment, prepared necessary applications for the intercity relay system and studio- transmitter links,[14] and arranged for necessary technical assistance and consulting; the antenna ordered for the station is a different type than that authorized in the KCTZ construction permit;[15] he discussed with ABC the possibility of a network affiliation for KCTZ;[16] and he sought and subsequently purchased property to be used for KCTZ's studio and offices. The petitioner further notes that although Mr. Curtis did not specifically claim whether or not he would manage KCTZ once it was built, Mr. Middleton, in his declaration, asserted that he was present during discussions between Messrs. Curtis and Bee, the general nature of which was that Mr. Bee would remain the owner of the station and Mr. Curtis would help construct the station and manage it. Further, Mr. Middleton stated that Mr. Curtis did not discuss the ownership of KCTZ with him, but that he merely assumed that Big Horn would obtain the construction permit. This, he declared, accounted for his description of Big Horn as the owner, or prospective purchaser, of KCTZ in applications for studio-transmitter links filed on behalf of that station.

14. The petitioner contends that the factual bases for her allegations of an unauthorized transfer of control of KCTZ have been virtually conceded by Mr. Curtis in his Billing declaration. She maintains that these facts establish that Mr. Curtis has been intimately involved in the station's financial and programming affairs, as well as its day-to-day activities, such as overseeing construction, obtaining equipment and property, and applying for necessary authorizations and permits. Such actions, the petitioner believes, are all indications of a *de facto* assumption of control of KCTZ by Mr. Curtis and Big Horn. Moreover, Ms. Reier maintains that the explanations for listing Big Horn as the current or prospective owner of KCTZ in FCC applications are less than convincing, and do not explain how both Messrs. Bee and Curtis could have reviewed and signed those documents, as claimed, without correcting such errors. The petitioner thus concludes that substantial and material questions exist as to whether the public interest has been or will be served by the grant of BBA's applications.

15. *The Applicants' Opposition.* In opposition pleadings, Big Horn and BBA state that they have been completely candid in their filings with the Commission, and the facts they have reported demonstrate that no unauthorized transfer of control of KCTZ has taken place. They maintain that the petitioner's allegations are speculative, misstate or ignore the facts, and are otherwise without merit. Moreover, they assert that all their dealings have been in every respect at arms-length, and at all times during this period ultimate control of KCTZ has remained with Mr. Bee. The applicants believe that a brief review of the efforts to construct KCTZ will substantiate their claims and refute the petitioner's allegations.

16. The applicants recount as follows. After the denial of the application to assign KCTZ to Eagle and facing expiration of the construction permit, Mr. Bee approached Mr. Curtis, a friend with broadcast experience, to assist in building the station. After agreeing to help in March 1987, Mr. Curtis proposed to Big Horn's shareholders that they loan BBA the money, secured by equipment, to build KCTZ, and that he would be personally involved in the construction of the station. It was agreed that an option be negotiated giving Big Horn the right at some future date to purchase the station, but the parties understood that this was uncertain and might never take place, and that until or unless the FCC approved transfer, BBA would retain full control of the station. On April 14, 1987, a

letter of intent was signed which proposed that Big Horn would receive an option to acquire KCTZ; that Mr. Curtis would acquire a 49 percent interest in Rose, BBA's general partner;[17] that Big Horn would make an equipment down payment of100,000; and that if no station sale resulted, Rose and BBA would be liable for repayment of all funds advanced for construction. The letter of intent, filed with the Commission on May 14, stated that the option, loan and related documents had yet to be prepared, and expressly provided that, except for the secured equipment down payment, the parties would not be obligated to go forward with the transaction "unless and until these documents are executed." However, no option agreement was ever concluded as Big Horn decided to withdraw from option negotiations "because of the difficulties caused by the Reiers."

17. During this period, the applicants state that construction of KCTZ proceeded. Assisted by Big Horn's Director of Engineering Middleton, Mr. Curtis negotiated for equipment and arranged for the fastest delivery and best prices. The applicants maintain that no equipment was ordered until the proposals and prices were reviewed and approved by Mr. Bee. Further, with respect to programming to be aired on the station when constructed, Messrs. Bee and Curtis determined that a networking arrangement would substantially lower the station's programming costs, especially if KCTZ could become an ABC affiliate.[18] As a result, Mr. Middleton prepared the applications for the intercity relay construction permits, as well as those for the studio-transmitter link facilities.[19] Mr. Curtis discussed with ABC the possibility of obtaining a network affiliation for KCTZ.[20] Mr. Bee took personal charge of staffing the station, reviewing employment resumes, meeting with and selecting prospective employees, and signing all letters to unsuccessful candidates. While Mr. Curtis made staffing recommendations, Mr. Bee retained final authority and approved all personnel decisions. In that regard, the applicants further assert that BBA, not Big Horn or Mr. Curtis, retained decision-making authority and control over station finances and programming. They state that Mr. Bee approved all program scheduling, executed all station programming contracts, and approved, in advance, all major financial expenditures. Moreover, the applicants maintain that the ultimate control of the station continues to reside with Mr. Bee, who as KCTZ's General Manager, makes all final policy decisions on station operation; Mr. Curtis, as Station Manager with day-to-day operational responsibility, reports directly and regularly to Mr. Bee. They note that as a senior management official at KCTZ, an owner and officer of the permittee, and an experienced television manager, Mr. Curtis of course exercises a supervisory function. Nevertheless, the applicants state that all major policy decisions in all areas of station operation must be cleared with, and approved by, Mr. Bee, who has never relinquished control of KCTZ.

18. The applicants further maintain that the petitioner has failed to raise any substantial questions as to the truthfulness of BBA's statements in its applications for extension of time to construct the station. They assert that merely because BBA reported acquiring equipment in 1987, the petitioner's allegation that it could not have been truthful in 1986 when it represented that equipment was being ordered is conclusory and speculative. In fact, they assert, Mr. Bee had taken steps to move forward on station construction during the pendency of the application to assign KCTZ to Eagle in the event that application were to be denied.[21] The applicants state that when the Commission denied the assignment to Eagle, and given the time constraints and complexity of the project, Mr. Bee turned to Mr. Curtis for assistance.[22] BBA's subsequent actions culminating in the successful commencement of KCTZ service, the applicants maintain, demonstrate that the permittee has honored its pledge to construct the station. They therefore contend that, the petitioner's allegations to the contrary notwithstanding, there is nothing to indicate that BBA misrepresented its efforts to construct KCTZ, or otherwise abdicated control of the construction permit to Big Horn.

19. The applicants contend that the petitioner's allegations of unauthorized transfer of control are refuted by BBA's May 14, 1987, filing with the Commission reporting Mr. Curtis' acquisition of an interest in the permittee, and disclosing the letter of intent with, and the loans received from, Big Horn. Moreover, the applicants maintain that when these same charges were raised by the petitioner's husband against Mr. Curtis and BHC in the Billings proceeding, the presiding Administrative Law Judge rejected them as without merit, and granted BHC's application.[23] In any event, they assert that the statements made by Messrs. Curtis and Middleton in their Billings declarations addressing the Reiers' allegations were, and remain, true and consistent with the facts outlined above. For example, despite the fact that the petitioner challenges Mr. Curtis' statement that he intended to purchase the property to be used for KCTZ's studio and offices as a personal investment, that is exactly what he did.[24] Similarly, Mr. Curtis stated in his declaration that KCTZ would not be operated as a satellite of KOUS-TV, and, the applicants maintain, that it is in fact the case.[25] Thus, they maintain that the petitioner's reliance on the Billings proceedings is misplaced, and fails to establish that misrepresentations were made regarding control of KCTZ.

20. The applicants further contend that in examining allegations of premature or unauthorized transfer of control, the Commission generally looks to factors such as who has authority over a station's finances, personnel, and/or programming decisions. In response to what they term the petitioner's conclusory and speculative allegations, the applicants assert that they have submitted the statements of BBA and Big Horn principals who state unequivocally, and based on first-hand knowledge, that Mr. Bee has never relinquished control over KCTZ, its finances, personnel or programming. Although the parties contemplated from the outset that Big Horn might acquire the station in the future and anticipated the execution of a final option agreement, the applicants note that those facts were disclosed to the Commission. They state that "only after difficult and time- consuming arms-length bargaining-- which did not begin in earnest until after KCTZ's sign-on -- was an agreement struck which culminated in the filing of the captioned assignment application." Nevertheless, the applicants note that funds loaned by Big Horn to BBA were fully secured and are to be repaid in the event the proposed transaction does not go forward. Further, Mr. Curtis received stock ownership, a title and the KCTZ station managership as consideration for his active assistance in building the station.[26] However, despite Mr. Curtis' valuable participation in the efforts to build and operate KCTZ, the applicants state that ultimate responsibility for the station's affairs and basic policies was never abdicated by BBA or Mr. Bee. Even if such a

transfer had occurred, the applicants argue. Commission law is settled that, absent persuasive evidence of intentional misrepresentations, there is no basis for denying an assignment application. In any event, they contend that BBA has been entirely truthful in its submissions to the Commission, and that the petitioner's unsupported allegations of unauthorized transfer of control and misrepresentation are adequately rebutted by the facts. They therefore assert that no substantial and material question has been raised as to whether the public interest would be served by grant of these applications.

21. *The Petitioner's Reply*. In reply pleadings, the petitioner argues that in light of the applicants' submissions, the facts in this case constitute a *prima facie* showing that Big Horn prematurely assumed *de facto* control of KCTZ. She states that it is undisputed that Big Horn provided the money to complete the station's construction, while its shareholder and consultant, Mr. Curtis, played an instrumental role in completing that construction, arranging for programming and studio space, and remains responsible for KCTZ's day-to-day operations.[27] The petitioner maintains that Mr. Curtis' acquisition of an ownership interest in BBA's general partner was merely "part and parcel of the entire arrangement" between BBA and Big Horn, whereby Big Horn would have the right to acquire the station after it was built and licensed. In that regard, the petitioner alleges that the fact that Mr. Curtis was named an owner and officer of BBA's general partner evidences the intention of involving him more deeply into the station's affairs. Absent compelling circumstances, she asserts, such involvement by a principal of a prospective purchaser evidences a premature assumption of control. Moreover, the petitioner maintains that the applicants' contention that the agreement between them was not "finalized" until shortly before the filing of the subject assignment application is of little significance, as the May 14, 1986, filing of the letter agreement between Big Horn, BBA and Mr. Curtis substantiates Big Horn's clear intent, and ability, to acquire KCTZ.

22. The petitioner further asserts that the applicants have failed to respond adequately to the abundance of factors tending to show that Big Horn assumed, and continues to, control KCTZ.[28] Further, she challenges the applicants' attempt "to brush aside the matter by pointing to an interlocutory ruling in the Billings comparative proceeding," noting that the presiding Administrative Law Judge's action denying Mr. Reier's petition to intervene is neither dispositive of the underlying issue nor in any way binding on the Commission in this case.[29] Notwithstanding that Judge's ruling, the petitioner argues that the materials now before the Commission clearly raise a substantial question as to whether an unauthorized transfer of control has taken place, and whether the parties attempted to conceal or misrepresent what has occurred.

DISCUSSION

23. In reviewing these allegations, we must initially note that Section 309(d)(1) of the Communications Act requires petitions to deny to "contain specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent" with the public interest. Section 309(d)(1) also states that "allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof." A hearing must be held, under Section 309(d)(2), if a petition raises "substantial and material" questions of fact, where "the totality of evidence arouses a sufficient doubt on the point that further inquiry is called for." *Citizens For Jazz on WRVR v. F. C. C.*, 775 F.2d 392, 395 (D.C. Cir. 1985). The allegation of ultimate, conclusory facts based on information and belief are not sufficient to meet this burden of pleading. *See Stone v. F. C. C.*, 466 F.2d 316, 322 (D.C. Cir. 1972).

24. As to the allegations now before us regarding an unauthorized transfer of control, Section 310(d) of the Communications Act prohibits any transfer of a construction permit or station license without prior Commission consent. The Commission has recognized many times that there is no exact formula by which "control" of a broadcast authorization can be determined, and it has often been required to look beyond legal title in order to ascertain whether a transfer of control has occurred. In most instances, the question of control involves an issue of fact that must be resolved by the specific circumstances presented. *See , e. g., Stereo Broadcasters, Inc.*, 55 FCC2d 819, 821 (1975). Nevertheless, over the years, the courts and the Commission have established helpful guidelines in this area. Generally, among the principal factors evaluated to determine whether an unauthorized transfer has occurred are control of policies regarding (a) the finances of the station, (b) personnel matters, and (c) programming. It is important to emphasize, moreover, that the Commission's concern in such cases is focused on the basic policies and ultimate control of the station in question, and the ability of permittees and licensees to exercise full responsibility over all matters involving the operation of the licensed facility. However, in carrying out the functions and obligations incumbent upon Commission licensees, they are permitted to delegate operational duties and responsibilities. Day-to-day operation of a station by an agent or employee, guided by the policies set by the permittee or licensee, is not inconsistent with the Communications Act. *See Alabama Educational Television Commission*, 33 FCC2d 495, 508 (1972). Nevertheless, although a permittee or licensee may delegate certain functions to others, it may not abdicate ultimate responsibility over all matters involving the operation of a broadcast facility. *Id.*

25. With the above discussion in mind, we now turn to the facts of this case. It is essentially undisputed that shortly after the denial of the application to assign KCTZ to Eagle, Mr. Curtis acquired his minority interest in the permittee's general partner and thereafter played significant role in completing the station's construction and commencing broadcast service. However, there is no properly substantiated evidence that Mr. Bee ever abdicated ultimate control, or that Mr. Curtis ever directly or indirectly controlled the basic operating policies at KCTZ with respect to financial, personnel or programming matters.

26. The fact that BBA obtained a loan from Big Horn does not of itself establish that it or Mr. Curtis have improperly influenced or otherwise interfered with the construction and subsequent operation of the station. Similarly, there is no basis to conclude from the material before us that Big Horn's loan to BBA, or its agreement to acquire KCTZ is anything other than a *bona fide* arms-length transaction. The fact that the liability for that loan is part of the consideration paid for the station does not compel a finding that a transfer of control has occurred. Under the Commission's attribution rules, a loan

to a licensee or permittee does not confer a cognizable interest in the creditors, "because there is no direct influence or control which pertains to them." *Attribution of Ownership Interests*, 97 FCC2d 997; 1022 (1984), *recon. granted on other grounds*, 58 RR2d 604 (1985), *further reconsidered*, 1 FCC Rcd 802 (1986). Further, a contrary conclusion is not automatically warranted merely because the loan is made by the prospective purchaser of the station in question. *See , e. g., Syracuse Channel 62, Inc.*, 60 RR2d 1161 (1986). The applicants maintain, and their sales agreement provides, that until such time as the Commission were to approve an assignment of KCTZ to Big Horn, BBA is to remain responsible for fulfilling its obligation to construct and operate the station, including being held liable for the repayment of funds advanced during construction if for any reason the proposed transfer is not consummated, including denial by the FCC. In fact, the petitioner refers to, but does not specifically challenge, Mr. Curtis' statements in his Billings declaration that Big Horn's shareholders understood that unless the Commission extended its prior consent to the proposed assignment, Big Horn would have no interest in KCTZ, and that Mr. Bee would retain ultimate control of the station until such time. The petitioner's speculative allegations to the contrary notwithstanding, there is nothing to indicate that the dealings between these parties in this regard constitute anything other than those types of independent business judgments which are free to be taken without Commission involvement, or that their relationship is anything other than that disclosed or represented to the Commission in the various applications or during the course of this proceeding. In that regard, when viewed against the applicants' submissions, which are properly supported by the declarations and affidavits of those with personal knowledge of the facts, the petitioner's speculative inferences drawn from the facts fail to raise a substantial and material question warranting further Commission action.

27. With regard to KCTZ's programming, it is essentially undisputed that shortly after being contacted by Mr. Bee, Mr. Curtis assisted in the attempt to secure a network affiliation for KCTZ, and thereafter took part in the formulation of the station's overall programming. However, after review of these allegations, we are not persuaded that this assistance represents such involvement in the operation of the station as to leave us with a question of an unauthorized transfer of control. The network affiliation contract is between ABC and BBA, and the fact that the agreement recognizes the application to assign the KCTZ construction permit to Big Horn is not inherently suspect. There is no indication from the agreement that Mr. Bee, who executed the contract on behalf of BBA, surrendered ultimate control of KCTZ's basic programming decisions.[30] As noted previously, a licensee's use of its employees or agents to carry out the basic policies established by it does not require a finding that control has been surrendered. *See Alabama Educational Television Commission, supra. See also Southwest Texas Public Broadcasting Council*, 85 FCC2d 713, 716 (1981). Similarly, the petitioner has not presented any specific and supported factual allegations which raise a substantial and material question with respect to KCTZ's "networking" relationship with KOUS-TV, or Mr. Bee's ability to set aside any KOUS-TV or ABC programming as BBA determines. The fact that Mr. Curtis assisted in the formulation of KCTZ's programming does not establish that Big Horn or ABC will improperly influence or otherwise interfere with the basic programming policies fixed by BBA, and ultimately by Mr. Bee.[31] Again, the petitioner's speculations and conclusory allegations fail to establish that a substantial and material question exists, particularly in light of the applicant's properly supported declarations and affidavits of those with personal knowledge of the facts alleged.

28. Examination of the hiring policies of KCTZ likewise fails to raise a substantial and material question requiring further action. Although Mr. Curtis may have generally advised or assisted Mr. Bee in the hiring process, the petitioner has not alleged, and we find nothing to indicate, that Mr. Curtis made a final determination with respect to the hiring or firing of, or set the compensation for, any employee subsequently employed by KCTZ. Moreover, on the basis of the unchallenged assertions of Messrs. Bee and Curtis that Mr. Bee retained ultimate authority over the station's employment policies and process, we believe that Mr. Curtis' limited role in this area is insufficient to raise a question of fact as to an unauthorized transfer of control.

29. Turning to the petitioner's remaining arguments, we are not persuaded that the history of KCTZ's construction demonstrates that an unauthorized transfer of the permit occurred or that the permittee misrepresented in the extension applications its efforts to complete the station. The petitioner has pointed to no properly supported facts which would indicate that BBA had not undertaken the steps toward construction represented specifically in BBA's two extension applications. The fact that the permittee's construction and/or equipment plans were altered during that period is not uncommon. Thus, we note that although BBA represented in its June 16, 1986, extension application that it had engaged a local realtor to secure property suitable for the station's studio, there is nothing inherently improper about the fact that that Messrs. Curtis and Coon subsequently purchased the property eventually used by KCTZ.[32] There is no Commission requirement that a permittee or licensee actually own such property, and the petitioner has advanced no specific facts that the present studio arrangement is, of itself, suspect. *See , e. g., Syracuse Channel 62, Inc., supra* at 1166. Moreover, as to the remainder of KCTZ's construction, although it is undisputed that Mr. Curtis was personally involved in the permittee's efforts to build the station and secure equipment, there is no indication that that involvement was anything more than an experienced broadcaster assisting and advising Mr. Bee. The petitioner has not raised, and we do not find, facts which would tend to indicate that Mr. Bee was not the final authority with regard to all matters involving station construction as has been represented. The fact that more economical equipment plans evolved and changed during the course of that construction does not warrant a conclusion that the permittee misrepresented material facts or was lacking in candor at the time it filed the extension applications.[33]

30. In conclusion, and after carefully examining these facts, we find that the permittee did not violate Section 310(d) of the Communications Act or misrepresent its progress towards construction in the extension applications. The applicants' explanation of the events surrounding the construction and operation of KCTZ are entirely plausible, and nothing raised by the petitioner warrants a contrary conclusion. Under these circumstances, it appears that Mr. Curtis' involvement in the construction and operation of KCTZ was and remains merely advisory, and

his activities are entirely consistent with the day-to-day responsibilities of a station manager to act in furtherance of the basic policies established by a permittee or licensee. Thus, although Mr. Bee relied on the background and experience of Mr. Curtis in making decisions affecting the station, the petitioner has not presented, and we do not find, probative evidence which would indicate that BBA or Mr. Bee abdicated control or surrendered ultimate responsibility for the station. Moreover, in that regard, there is no evidence that any basic policy decisions established by Mr. Bee were not carried out by Mr. Curtis or those responsible to him. Accordingly, we conclude that the petitioner has not raised any substantial and material question of fact suggesting that there is or was a *de facto* unauthorized transfer of control over any aspect of the station's construction and operation, or that the permittee made material misrepresentations, or was lacking in candor, with respect to that fact in its submissions to the Commission.

31. With respect to petitioner's remaining contentions, we note that it is undisputed that BBA did indeed substitute a different directional antenna for that authorized in the KCTZ construction permit yielding different coverage patterns. Moreover, the petitioner is correct that Section 73.1690(b)(i) of the Rules requires prior FCC authorization before "any change is made in the directional radiation characteristics of a directional antenna system." In response to the petitioner's allegation, the applicants argue that there is no material difference between the two patterns, and therefore the substituted antenna does not require the submission of a license modification.[34] Section 73.1690(b)(i) refers to *any* change in the directional radiation characteristics of a directional antenna system. Therefore, before action may be taken on the subject license application, KCTZ will be required to file an appropriate modification application within 30 days of the release of this *Order*.[35] Accordingly, consideration of the license application must, of necessity, be deferred pending staff receipt and evaluation of the required information. Despite this fact, because the station is operating and providing service, as well as the fact that the variance in the directional antenna does not appear to be substantial, we believe it is appropriate to grant an 180-day special temporary authority for KCTZ to continue its operations.

32. In light of the above discussion, we conclude that the petitioner has not raised a substantial and material question with respect to the propriety of the grant of BBA's extension applications. Therefore, the grants of those applications ARE AFFIRMED, and the petitioner's pleadings challenging those actions ARE DENIED. However, the objection to BBA's license application IS GRANTED to the extent indicated herein, and IS DENIED in all other respects. Similarly, we conclude that Ms. Reier has failed to raise any substantial and material questions of fact to establish that a grant of the WCTZ assignment application would be inconsistent with the public interest. Accordingly, the petition to deny the assignment application IS DENIED and, finding the applicants fully qualified, that assignment application IS GRANTED. Finally, station KCTZ is directed to file an appropriate modification application within 30 days of the release of this *Order*.

33. Copies of this *Memorandum Opinion and Order* shall be sent Certified Mail - Return Receipt Requested to the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

FOOTNOTES

[1] Ms. Reier is a resident of Bozeman and is a viewer of the station insofar as it began operating in September, 1987.

[2] As to its progress toward construction of the station, BBA reported that it had: formalized the lease for its transmitter site; cleared the transmitter site for construction and completed an access road; poured footings for its tower; and erected a transmitter building. It also stated that its tower was on site awaiting curing of the footings and was scheduled to be erected during July, 1986. Further, it noted that it anticipated that full power to operate the facilities would be installed at the site by July 30, 1986.

[3] Eagle proposed to operate KCTZ as a satellite of its commonly owned KECI-TV, Missoula, Montana. The Bureau concluded, however, that in light of the significant degree of overlap between the two stations, Eagle had not met its burden of showing that its proposal would serve the public interest as required by Note 5 to Section 73.3555 of the Commission's Rules.

[4] In addition to reiterating her charges of an unauthorized transfer of control, misrepresentation, and construction at variance from that authorized, Ms. Reier also maintains that BBA failed to demonstrate that an extension was justified. She alleges that not only was BBA's application filed late without an explanation, but it also did not provide sufficient information regarding the acquisition of equipment, the progress made toward construction, and why construction could not be completed on time. She suggests that the reason for BBA's continued delay in construction is attributable to its efforts to secure another buyer for the station after its unsuccessful attempt to assign the construction permit to Eagle, and that such facts do not justify the grant of the requested extension.

[5] The petitioner also maintains that the license application is incomplete because BBA did not file contemporaneously an ownership report as required by Section 73.361(b) of the Rules. However, because BBA did file an ownership report on August 26, 1987, some two weeks prior to the filing of the license application, no further discussion of this allegation is necessary.

[6] BBA's opposition pleading is directed to Ms. Reier's petition to deny the license application, and supplements to both her petition for order to show cause why the KCTZ construction permit should not be revoked and the petition to set aside the action granting BBA's extension application.

[7] BBA also maintains that these same charges were found to be without merit when leveled by Ms. Reier's husband, and rejected by the Presiding Administrative Law Judge, in another Commission proceeding, which will be discussed below.

[8] That application contains correspondence between BBA and Big Horn, dated between October 1 and 13, 1987, which constitutes the agreement between them. That agreement contemplates, among other things, the sale to Big Horn of KCTZ's license and assets, and a half interest in existing improvements at the tower site. As consideration for the purchase, Big Horn agrees to: assume275,000 of the seller's debt; forgive BBA's indebtedness to Big Horn for funds loaned for the construction and operation of the station; pay45,000 to the seller at closing; pay15,000 to the seller's attorney; and honor up to65,000 in "trade-out" contracts

entered into by the seller for tangible personal property. The agreement also calls for Big Horn to advance funds necessary for the continued operation of KCTZ, although it is specifically noted that such funds shall be under the direction and guidance of Mr. Bee, and will be added to the security agreement governing funds advanced previously. The agreement also provides that in the event the assignment does not occur as a result of an act by BBA, KCTZ's existing programming arrangement with KOUS-TV would be continued, and KCTZ would retain its current studio location for 180 days to allow the parties to negotiate suitable arrangements at such time.

[9] At that time, Mr. Curtis was also Vice President, a director and 11.6 percent shareholder of Big Horn, then known as KOUS-TV, Inc. Mr. Curtis resigned as an officer and director of Big Horn in June, 1987.

[10] The petitioner also notes that no loan agreements or security instruments have been filed with the Commission, as called for by Section 73.3613(b)(5) of the Commission's Rules, reflecting initial or subsequent loans made by Big Horn to BBA.

[11] The petitioner also alleges that insofar as equipment was ordered for the station after Mr. Curtis became involved in the permittee, such facts are inconsistent with BBA's representations in its extension applications that equipment had been ordered, calling into question the truthfulness of the statements made in, and the propriety of the grant of, those applications.

[12] In fact, the petitioner points out, the network affiliation agreement was entered into prior to the filing of the application to assign the KCTZ permit to Big Horn. Nevertheless, she asserts, a rider is attached to the affiliation agreement acknowledging the network's understanding that BBA intends to sell its interest in the station to Big Horn, and BBA's agreement to file and prosecute diligently such an assignment application. That rider further provides that upon the consummation of that transaction, the network intends "to view favorably a request by you to assign the [affiliation] agreement to Big Horn . . . ."

[13] Ms. Reier asserts that the actual contract between ABC and BBA is identical to other standard satellite affiliation agreements, except that certain explicit references to the status of KCTZ as a "satellite" have been stricken, and in one place replaced with the specific condition that the station remain "under common ownership with KOUS-TV." The petitioner maintains that the network affiliation only underscores the fact that the station is actually being operated as a satellite of KOUS-TV. Ms. Reier claims to have observed no locally produced programming on KCTZ and claims that, with minor exceptions, the station is simply rebroadcasting KOUS-TV. In fact, she states that KCTZ's visual station identification appears simultaneously with that of KOUS-TV and its satellite KYUS-TV, Miles City, Montana.

[14] The petitioner states that, in his declaration, Mr. Curtis explained that Mr. Middleton was responsible for preparing the applications for the studio-transmitter links and the intercity relay construction permits. With respect to the studio-transmitter link applications filed on behalf of KCTZ, Mr. Curtis declared that those applications were prepared in haste in order to avoid the payment of FCC application fees, which were to take effect shortly, and were sent directly to Mr. Bee for his signature. He concluded that in such haste, Mr. Middleton referred to Big Horn as the owner of the station, a mistake not caught by Mr. Bee before signing them. He averred that, to the best of his knowledge, neither he nor Mr. Bee said or did anything to lead Mr. Middleton to such a conclusion. As to the intercity relay system applications, Mr. Curtis said that they were filed on behalf of KOUS-TV after he reviewed and signed them. He stated that although it was the purpose of the requested authorizations to supply KOUS-TV programming to KCTZ, there is nothing in those applications to suggest that KCTZ would be a satellite of KOUS-TV. Mr. Curtis further stated that references to Big Horn as the owner of KCTZ, or in the process of acquiring the construction permit, were incorrect and simply overlooked.

[15] The petitioner also states that, in his declaration, Mr. Curtis claims that the Commission "does not care about" the fact that it ordered a different antenna because it is not "different" in terms of the "directional pattern from that specified in the construction permit." Nevertheless, Ms. Reier maintains that Section 73.1690 of the Commission's Rules requires an application to be filed if there are changes made in a directional antenna.

[16] Ms. Reier notes that, in his declaration, Mr. Curtis disputes the claim that KCTZ would be operated as a "satellite" of KOUS-TV, as that term is defined by the Commission. Instead, she states, Mr. Curtis describes vaguely the KCTZ-KOUS-TV arrangement as a "networking relationship." Nevertheless, the petitioner believes that, having gone to the expense of arranging for an intercity relay system to link the two stations, the amount of KOUS-TV programming to be carried on KCTZ would not be insubstantial. In any event, the petitioner alleges that although Mr. Curtis stated in his declaration that it was never intended that KCTZ would be operated merely as a satellite of KOUS-TV, such has become the case since the station began broadcasting. She asserts that she has observed no locally-produced programming on KCTZ, and with only minor exceptions such as syndicated shows, the station merely rebroadcasts KOUS-TV. Thus, Ms. Reier urges examination of these facts in order to determine whether Mr. Curtis and/or BBA misrepresented facts to the Commission.

[17] In addition, Mr. Bee appointed Mr. Curtis Vice President of Rose, with the intention that he would be Station Manager working directly for, and responsible to, Mr. Bee, the General Manager.

[18] The applicants state that because of the substantial costs associated with building and running television stations, networking relationships are quite common in sparsely populated areas of the western United States. Moreover, they assert that television networks such as ABC are reluctant to accept affiliates in smaller markets without rebroadcasting arrangements because the expense of maintaining an affiliation with smaller market stations, such as KCTZ, exceeds the return the network generates from the affiliation.

[19] The applicants state that Mr. Middleton's explanations for the discrepancies in these applications, including some references to Big Horn as the "owner" of KCTZ, are contained in his declaration submitted in the Billings proceeding. *See* footnote 14, *supra*. They assert that despite the fact that the petitioner continues to insist that Mr. Middleton participated in an unauthorized transfer, she has not challenged his credibility.

[20] The applicants assert that Mr. Curtis was the logical choice to approach ABC, noting that at that time, he was General Manager of KOUS-TV, and had dealt with the affiliate relations department in connection with obtaining that station's ABC affiliation. Nevertheless, the applicants declare that the final authority with respect to KCTZ's affiliation is Mr. Bee, as evidenced by the fact that the agreement is between BBA and ABC, and was executed by Mr. Bee, as President and majority owner of Rose. Further, they maintain that the rider in which ABC may desire a sale of KCTZ to Big Horn is not indicative of an unauthorized transfer of control, particularly due to the fact that "Big Horn has never made a secret of its interest in [such] a sale."

[21] In addition to work associated with its transmitter site and facility, the applicants state that BBA had engaged the services of a local realtor to obtain suitable studio property, and had received equipment proposals for which Mr. Bee was negotiating terms and leasing commitments.

[22] In his declaration, Mr. Bee states that because firm leasing arrangements on equipment were difficult to obtain prior to a grant of the construction permit extension, he developed with Mr. Middleton a package of used equipment which would enable BBA to move forward with construction at a significantly reduced cost. He asserts that after the construction permit was extended, with Mr. Curtis' help BBA was able to secure that equipment, which proved more cost effective than that called for in earlier plans.

[23] The applicants note than in support of his petition to intervene in the Billings proceeding, Mr. Reier proffered the same declaration setting forth his interpretation of his meeting with Mr. Bee's attorney regarding KCTZ, which is relied upon by his wife to support the allegations raised here. They state that in denying Mr. Reier's petition to intervene by *Memorandum Opinion and Order*, FCC 87M-1752, released July 23, 1987, the presiding Administrative Law Judge observed that Mr. Reier did not disclaim interest in the joint venture proposed by Mr. Bee's attorney, so that "among the inferences that reasonably can be drawn from [Mr. Reier's declaration] is one of [his] displeasure at being cut out of the deal by Curtis."

[24] Mr. Curtis avers that although he originally intended to purchase the subject property by himself, it was eventually acquired by C&C Properties, A Montana Partnership, equally owned by him and Daniel W. Coon, who is also a principal of Big Horn. Nevertheless, he states, that property is held solely as a personal investment of the two, who, as the Commission knows as a result of the Billings proceeding, are longstanding friends and business associates. Insofar as Mr. Curtis' acquisition of the subject property was and remains a personal investment on his part, the applicants argue that the petitioner has failed to establish that he made a knowing falsehood, or that the facts as known are material to this proceeding.

[25] The applicants state that despite the petitioner's allegation that she has not personally observed local programming on KCTZ, more than ten percent of the station's monthly broadcast hours are consistently devoted to locally originated programming not aired on KOUS-TV. The applicants point out that as a new station, with a network affiliation requiring it to rebroadcast programs originated elsewhere over a substantial portion of its broadcast day, its programming plans remain evolutionary, but the station nevertheless has plans to expand its presentation of local programming. In any event, the applicants maintain that the Commission generally considers "satellites" to be stations totally rebroadcasting the programming of a parent station, and "partial satellites" to be stations which originate some local programming which is generally less than five percent of its total weekly programming. Thus, the applicants argue that under any Commission definition, KCTZ cannot be considered a satellite operation. Moreover, they point out that because there is no Grade B signal overlap between KCTZ and Big Horn's stations KOUS-TV and KYUS-TV, even if KCTZ were a satellite of KOUS-TV, such operation is not as a matter of law proscribed by any Commission rule or policy. Finally, with respect to the petitioner's claim that she observed simultaneous visual station identification of KCTZ, KOUS-TV and KYUS-TV, the applicants state that the pertinence of this observation is unclear.

[26] With respect to the petitioner's allegation concerning Mr. Curtis' ongoing involvement with Big Horn, the applicants note that he resigned as an officer and director of Big Horn in June, 1987, while remaining a minority shareholder of Big Horn and a consultant to KOUS-TV. They maintain that the petitioner's speculation about Mr. Curtis' continuing relationship with Big Horn is unfounded, and state that no consulting agreement has been filed with the Commission because no such formal agreement exists. In any event, they note that in the Billings proceeding, won initially by BHC and presently pending before the Review Board, both Messrs. Curtis and Coon have committed unequivocally to severing all interest in BBA and Big Horn in the event of a final grant of BHC's application.

[27] With regard to KCTZ's programming, Ms. Reier states that recent viewing substantiates that KCTZ continues essentially to rebroadcast KOUS-TV programming, both network and syndicated fare. As to her previous claim that she had not seen any locally produced programming on KCTZ, she states that she made a concerted effort to watch the station during all times of the day, and although she did not watch every minute, she saw no such programming. She does not doubt, however, that such programming could have been broadcast. She further asserts that she did try unsuccessfully to obtain a program schedule from the station and, as of November 1987, KCTZ's schedule was not being made available to the local newspaper. In any event, the petitioner continues, she has had occasion to view the local programming referred to by BBA in its pleadings, and notes that at least one such program, "Good Evening Montana," is nothing more than a rebroadcast of the same day's "Good Morning Montana."

[28] In support of her allegation that BBA misrepresented material facts regarding the construction of KCTZ, Ms. Reier states that the July 7, 1987 extension application reported that necessary equipment "either has been delivered or is in transit." Yet, in their consolidated opposition to the petition to deny the proposed assignment of the KCTZ construction permit, the petitioner notes that the applicants state that the station's studio cameras were not delivered until late October. She therefore argues that if the statement in the extension application was accurate, either the cameras were in transit for an inordinately long time or BBA did not consider them "necessary equipment." This, she maintains, is another indication that BBA misrepresented or was lacking in candor in statements regarding the station's construction.

[29] In fact, the petitioner notes, the presiding Judge did not reach Mr. Reier's petitions to reopen the record and enlarge the issues, as those pleadings were dismissed as moot in light of the denial of the petition to intervene.

[30] The petitioner also infers that an unauthorized transfer of control has occurred because the agreement between ABC and BBA states that KCTZ's network affiliation will terminate automatically if KCTZ "shall cease to be under common ownership with Station KOUS-TV." However, because the rider to the contract specifically recognizes the pending application to assign KCTZ to Big Horn, we are not persuaded by the petitioner that ABC has, or is now, treating KCTZ as a commonly owned satellite of KOUS-TV. The fact that BBA's agreement with ABC might terminate if the assignment application is denied does not lead to the conclusion that control of the station's basic programming decisions, before or after such an event, has been abdicated. Further, there is no evidence that BBA will not be free to seek a continuation of the network affiliation if the proposed assignment is denied, an arrangement to be pursued in the parties' independent business judgments free from Commission involvement.

[31] As to KCTZ's present operation, it does not appear that the station is functioning as a "satellite" as that term is applied by the Commission. We are not persuaded by the petitioner that the intercity relay system evidences KCTZ's satellite status, particularly in light of the permittee's explanation of its arrangement with KOUS-TV and the station's present operation. Further, we agree with the applicants and find that the simultaneous visual station identification of the stations referred to by the petitioner is not conclusive of a satellite operation. In any event, the fact that a station might receive its network or other programming from another licensee by microwave is not prohibited by any Commis-

sion rule or policy, does not evidence a satellite operation, and does not establish that a licensee has ablicated control over its station's programming.

[32] Moreover, the fact that Mr. Curtis subsequently purchased the subject property with Mr. Coon is not inconsistent with his statement in the Billings proceeding that he intended to purchase the property as a personal investment. Both Messrs. Curtis and Coon attest that they are equal partners in the ownership of the property solely as a personal investment, unrelated to their broadcast interests, and the petitioner has raised no particular facts to cast doubt on the credibilty of those statements. Therefore, we are not persuaded by the petitioner that Mr. Curtis made material misrepresentations regarding KCTZ's studio property.

[33] Simlarly, we find no basis to conclude that the petitioner has raised a material question of misrepresentation with respect to the delivery of KCTZ's studio cameras. The petitioner essentially intimates that because that equipment was not received at the station until October 1987, the permittee misrepresented or was lacking in candor when it stated in the July 1987, extension request that all necessary equipment had been delivered or was in transit. The petitioner's conjecture as to whether they were in transmit for an inordinately long time or were not considered "necessary equipment" by BBA falls significantly short of establishing that substantial and material question exists as to whether the public interest is served by the grant of these applications. Whether BBA considered the cameras to be "necessary equipment" for the operation of the station is not clear. However, no motive is readily apparent for BBA to fail to disclose that the cameras had not yet arrived at the station. In fact, it is clear that KCTZ could be viewed as substantially complete for purposes of justifying the grant of an extension application. The lack of apparent reason to be less than candid on this relatively insignificant point leads to a conclusion that BBA's error, if any, falls on the side of carelessness and that any such misstatement was not intentional.

[34] BBA also maintains that Section 73.1690 by its terms applies only to "licensee modifications" and therefore does not apply to it as a mere permittee. However, no authority is cited for that proposition, and we are aware of none. Therefore, we reject BBA's interpretation of that provision of the Rules.

[35] There is no basis, however, to assume that these facts give rise to an issue of misrepresentation with respect to the antenna installed at KCTZ. BBA has not attempted to hide these facts from the Commission, and in light of its disclosures to the Commission in this proceeding, we discern no motive, or attempt, to deceive. The petitioner's allegations in this regard fall substantially short of a *prima* facie showing of a substantial question of deception.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Exchange Carrier Association, Inc.'s Cost Accounting and Procedures Manual — AAD 8-1895

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 1988; Released: July 13, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. The National Exchange Carrier Association, Inc. (NECA) is an association of local exchange carriers (LECs) established to administer the access charge revenue pool through which LECs obtain compensation for providing services and facilities in connection with the origination and termination of interstate and foreign telecommunications. Under Section 69.603(a) of the Commission's Rules,[1] NECA is precluded from engaging in "any activity that is not related to the preparation of access charge tariffs or the collection and distribution of access charge revenues unless expressly authorized by order of the Commission."[2]

2. In the *Intrastate Services Order*, [3] the Chief, Common Carrier Bureau, authorized NECA to engage in certain specified activities, called the authorized intrastate activities, in addition to those authorized in Section 69.603(a). These additional activities all relate to intrastate tariffs and revenue pools.[4] NECA's authorization to engage in them is subject to, among other conditions, NECA's submitting and obtaining Commission approval of a cost accounting and procedures manual prior to undertaking any of the authorized intrastate activities.[5] The manual must ensure that (a) none of the costs NECA incurs in connection with the authorized intrastate activities will be recovered through interstate tariffed charges; (b) the authorized intrastate activities will be self- sufficient from a cost recovery standpoint; and (c) all information derived from, and in any way incident, to our authorization will be available to the Commission.[6]

3. NECA submitted its manual on December 31, 1987. The manual divides NECA's activities into two groups: category I activities, which generally consist of the activities NECA is required to perform in furtherance of the Commission's access charge plan; and category II activities, which consist of all NECA activities not classified as category I activities.[7] The manual provides information regarding NECA's internal accounting system, staff member time and expense reporting procedures, and proposed methods for apportioning costs between category I and category II activities. Although the Commission placed the manual on public notice,[8] there has been no comment on the manual. Thereafter, in response to our request, NECA submitted a letter containing additional information regarding its time reporting and cost apportionment procedures.[9]

4. In this Order, we determine that NECA's manual contains two, apparently irreconcilable, cost apportionment systems. This fundamental defect precludes a finding that the manual meets the manual approval standards contained in the *Intrastate Services Order*,[10] and we therefore decline to approve the manual. NECA will have to file and obtain our approval of a new manual before engaging in the authorized intrastate activities. To assist NECA's preparation of that filing, this Order discusses additional matters that NECA must address if its new manual is to comply with Commission requirements.

II. DISCUSSION

A. *Overall Sufficiency of the Manual*

5. When we required NECA to file and obtain our approval of a cost accounting and procedures manual prior to engaging in any of the authorized intrastate activities, we stated that the manual should meet certain conditions. Two of these conditions concern the ability of the manual to prevent cross-subsidization. We specified that the manual should ensure that none of the costs NECA incurs in connection with the authorized intrastate activities will be recovered through interstate tariffed charges and that the authorized intrastate activities will be self-sufficient from a cost recovery standpoint.[11]

6. We have been unable to determine that NECA's manual meets these conditions, because we have been unable to understand NECA's overall cost apportionment methodology. NECA apparently intends to use a combination of two distinct systems to apportion costs between category I and category II activities. The first of these systems is similar to the system the Commission promulgated for telephone companies in the *Joint Cost Order*.[12] When NECA uses this system, its manual purports to divide NECA's total company costs into homogeneous cost categories or pools[13] that would be apportioned between category I and category II activities on cost-causative basis.[14] At one point in the manual, NECA states that its apportionment methods will consist of direct assignment, direct attribution, indirect attribution, and application of the general allocator.[15]

7. While such a system might appropriately be used to develop an accurate cost manual for NECA, the manual also proposes to use a labor and overhead rate system to apportion costs. This system, which NECA has not fully explained, apparently would assign the salaries of virtually all of NECA's staff members directly to category I and category II activities, in accordance with the staff members' normal job classifications.[16] NECA states that each hour each of these staff members works outside his or her normal job classification "carries with it both a dollar amount reflective of the salary for the staff member's salary grade and a dollar amount that insures that all applicable overheads are fairly allocated between categories."[17]

8. We have been unable to reconcile this proposed use of labor and overhead rates with NECA's statement that its apportionment methods will consist of direct assignment, direct attribution, indirect attribution, and application of the general allocator. We believe that NECA's failure to explain its overall apportionment system is so

fundamental a deficiency as to preclude any assessment as to whether the manual would prevent cross-subsidization. Therefore, we will not permit NECA to engage in the authorized intrastate activities until such time as it files, and we approve, a new cost accounting and procedures manual containing understandable and internally consistent apportionment proposals. If these proposals include the use of labor and overhead rates, NECA shall explain, in a separate section of any new manual, precisely how the rates would be calculated and precisely why application of the rates would result in an accurate apportionment of costs between category I and category II activities.[18] Any new manual NECA may file also should provide the clarifications and corrections discussed in other portions of this Order.

B. ***Activity Categories***

9. Under the Commission's Rules, NECA's core functions are the preparation of access charge tariffs and the distribution of access charge revenues.[19] In addition to activities related to these functions, NECA may provide interstate billing and collection services,[20] and, upon approval of a cost accounting and procedures manual, engage in the intrastate activities authorized in the *Intrastate Services Order*.[21] The costs of these additional activities are to be excluded from NECA's interstate access charge calculations.[22]

10. In its manual, NECA attempts to implement the requirements of the *Intrastate Services Order* by dividing all NECA activities into two categories. According to the manual, category I activities consist of activities "mandated" by the Commission, which are performed "in support of the Commission's access charge plan."[23] Category II activities are defined in one portion of the manual as "optional activities authorized, but not mandated by the Commission"[24] and in another portion of the manual as those expenses incurred by NECA or its affiliates that are not associated with or incidental to the following: 1) preparation, defense, and modification of interstate Association tariffs, 2) administration of interstate pooled receipts and distributions of exchange carrier revenues resulting from Association tariffs, and 3) those expenses that pertain to FCC proceedings involving Subpart G of Part 69 of the Commission's rules.[25]

11. NECA's establishment of separate categories of activities is an appropriate step in developing a cost allocation manual. We believe, however, that NECA has defined its categories too imprecisely to ensure that none of the costs it may incur in connection with the authorized intrastate activities would be recovered through interstate tariffed charges and that the authorized intrastate activities would be self-sufficient from a cost recovery standpoint, as required by the *Intrastate Services Order*.

12. NECA's definition of category I activities and its first definition of category II activities[26] attempt to distinguish between "mandated" and "optional" activities. We are concerned that terms such as "mandated" and "optional" are too ambiguous to prevent divergent interpretations of the manual by the Commission, NECA's staff members, and NECA's auditors. This concern is particularly acute because the manual contains a second, materially different definition of category II activities, which is derived from the definition of category I expenses that is being considered for NECA in CC Docket No. 87-2.[27] Although this second definition provides a measure of guidance as to the scope of the respective activity categories, we believe that any new manual NECA may file should list each type of activity included within each category. Such listings would help minimize the possibility of misinterpretation of the manual by those who would apply it.

13. Because of the problems discussed above, NECA will have to redefine its categories of activity in any new manual it may file. The new definitions should be provided in a separate section of the manual and, to the extent feasible, should list each of the activities included within the respective categories. While we do not wish to foreclose NECA's discretion in relation to the terms of the definitions or prejudge the pending Rule Making in CC Docket 87-2,[28] the manual shall, in addition to defining category I properly, include within category II the authorized intrastate activities as well as such interstate billing and collection activities as NECA may perform.[29] In the event NECA is authorized to engage in additional activities,[30] it would have to make any changes to its activity categories as might be required to reflect such authorization.[31]

C. ***Affiliate Transactions.***

14. In the *Joint Cost Order*, the Commission adopted detailed rules specifying valuation standards to be applied in recording transactions between telephone companies and their non-operating affiliates. These affiliate transaction rules reflect the complex corporate structures within which many telephone companies operate as well as the variety of transactions that occur between telephone operating companies and their non-operating affiliates.[32] In contrast, NECA has only one corporate affiliate, Independent NECA Services, Inc. (INS), and INS may engage in only those activities that the Commission has authorized for NECA. Therefore, NECA proposes to treat itself and INS as a single entity for cost allocation purposes.[33]

15. We believe treating NECA and INS as a single entity for cost allocation purposes would yield accurate results for any affiliate transactions that NECA might engage in during the immediate future. We are concerned, however, that we would be unable to consider the possible effects of future changes in NECA's corporate structure and affiliate transactions, if the manual were not to contain current information on these matters. Therefore, we direct NECA to include, in any new manual that it may file: (a) a chart of its corporate structure; (b) a description of the activities in which each of its affiliates engages; and (c) a description of the nature, terms, and frequency of those transactions between NECA affiliates whose costs would not be determined by the apportionment methods specified in the new manual.[34]

D. ***Time Reporting Procedures***

16. In its manual, NECA proposes to use an exception time reporting system to record staff member time.[35] Because the manual did not describe this system in sufficient detail for us to evaluate it, we requested clarification of NECA's time reporting procedures. NECA's April 26 Letter responded to our request.

17. The April 26 Letter states that NECA's Board of Directors and four of the company's staff members (the President and three of the Vice Presidents) will be exempt from time reporting. All other staff members will be classified as either category I or category II staff members, in accordance with their normal job functions. These staff

members will log exception time reports whenever they engage in activities outside their job classifications for longer than one hour. The reports are to be submitted to NECA's departmental directors. These directors are required to report, by salary grade, the actual hours staff members within their departments spend on category II activities each month and to maintain accurate subsidiary records documenting those hours.[36]

18. Accurate time reporting is an essential step in the process of achieving accurate cost allocation results for any entity that, like NECA, incurs costs jointly or in common for more than one category of activity. The description of NECA's time reporting procedures contained in the manual raised a number of questions as to the nature and scope of those procedures. Although NECA's April 26 Letter resolved most of those questions, we believe that NECA should include a full description of its time reporting procedures in any new manual it may file. In addition to the matters discussed in the April 26 Letter, this description shall explain the procedures NECA intends to use to teach, monitor, and enforce accurate time reporting by its staff members.[37]

19. The questions not resolved in the April 26 Letter concern NECA's procedures for capturing and allocating the costs of nonproductive time. That letter indicates that NECA intends to capture the costs of nonproductive time by applying procedures that it has developed for determining how many hours of nonproductive time its staff members average each year.[38] NECA, however, has not described these procedures. We direct NECA to do so in any new manual it may file. If the procedures involve the use of surveys, the description shall explain the survey methodology. Moreover, NECA's failure to explain its overall cost apportionment system has made it impossible for us to evaluate NECA's procedures for allocating the costs of nonproductive time. NECA shall explain these procedures in any new manual it may file.

E. *Accounting Classifications*

20. In its manual, NECA states that it is not a telephone company subject to the Commission's Uniform System of Accounts (USOA)[39] and that its manual is based on its own internal accounting system rather than on the USOA. The manual states that NECA's accounting system divides total company costs into accounts in accordance with generally accepted accounting principles and forms a reliable basis for the preparation of financial reports.[40] The manual lists twenty-seven accounting classifications. Each of the classifications corresponds to an account, or group of accounts within NECA's internal accounting system. Like USOA accounts and subaccounts, NECA's accounting classifications divide total company costs into functional groupings that can be further divided into homogeneous cost pools for subsequent apportionment between activity categories. NECA generally has provided concise and understandable explanations of the amounts recorded in each of its accounting classifications. These explanations have allowed us to verify the reasonableness of virtually all of the classifications.[41]

21. We require, however, clarification of three terms used in NECA's descriptions of its accounting classifications. These terms are "Income Tax Gross-up" in regard to the accounting classification for Salaries; "Miscellaneous Income" in regard to the accounting classification for General Expenses; and "Data Processing Chargeback Direct" in regard to the accounting classification of the same name. NECA shall explain each of these terms in any new manual it may file.

F. *Other Cost Apportionment Problems*

22. *Recalculation of Labor and Overhead Rates.* In its April 26 Letter, NECA states that it intends to recalculate its labor and overhead rates annually."[42] NECA states that annual recalculation would be sufficient "to reflect current operating conditions."[43] Although we are not precluding NECA from using labor and overhead rates to apportion costs, we are concerned that NECA has stated no basis for its belief that annual recalculation will be sufficient. Therefore, any manual that NECA files that proposes to use labor or overhead rates to apportion costs shall either (a) show how NECA's procedures for recalculating the rates would result in rates that reflect current operating conditions over time or (b) propose recalculation procedures that accomplish this objective.

23. *Cost Pools.* We have already indicated that certain portions of NECA's manual purport to divide NECA's total company costs into homogeneous cost pools.[44] These apparent cost pools are listed in a "Cost Definition" column in NECA's cost table.[45] Unlike the description of accounting classifications,[46] the manual provides only minimal information regarding the methods NECA intends to use to assign costs to these pools. We must have sufficient information regarding such methods before we can determine whether a manual will prevent improper cost shifting between different groups of activities on a long-term basis. Therefore, we direct NECA to describe the methods it intends to employ to assign costs to cost pools. This information shall be provided for each cost pool listed in any new manual NECA may file.

24. *Usage Measurements.* The manual also contains a series of what appear to be direct attribution and indirect attribution cost pools, for accounting classifications such as Data Processing and Insurance, that would be allocated between category I and category II activities "based on related usage measurements."[47] The manual, however, does not describe these usage measurements. Since usage measurements constitute an integral part of the apportionment methods on which they are based, NECA is directed to describe each of these usage measurements in any new manual it may file.

25. *Use of General Allocator.* NECA proposes to create what appear to be cost pools within nine of its accounting classifications that would be allocated using the general allocator.[48] Since NECA has not described adequately how it intends to assign costs to these cost pools,[49] we have been unable to determine whether each of the proposed uses of the general allocator would be warranted. We believe that NECA's descriptions of its methods for assigning costs to cost pools may enable us to make these determinations. Therefore, we will not impose any requirement that NECA justify in detail each use of the general allocator it may propose. We intend to examine this matter in connection with our review of any new manual NECA may file.

26. We are concerned, however, that NECA may intend to use the general allocator to apportion all expenses associated with its Board of Directors and four of its top officers. While we do not necessarily believe that these individuals should be required to report their time,[50] we believe that use of the general allocator alone may produce an inaccurate allocation of the associated expenses.

We also believe that the cost of using direct assignment or attribution for portions of these expenses may be low in relation to the expenses being apportioned. Therefore, in any new manual it may file, NECA must either propose a more cost-causational allocation method for these expenses or show why such a method should not be mandated.[51]

G. *Availability of Information.*

27. In the *Intrastate Services Order*, we stated that NECA's manual must ensure that all information derived from, and in any way incident to, our authorizing NECA to engage in intrastate activities will be available to the Commission.[52] Despite our statement, NECA's manual does not address how NECA will ensure the availability of such information to the Commission. In any new manual it may file, NECA shall specify the procedures it will employ to ensure such availability.

III. ORDERING CLAUSE

28. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), that NECA's Cost Accounting and Procedures Manual IS DISAPPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 C.F.R. §69.603(a).

[2] *Id.*

[3] NECA's Request for Authority to Provide Intrastate Services to Exchange Carrier Members, 2 FCC Rcd 6853 (1987)(*Intrastate Services Order*).

[4] The authorized intrastate activities consist of the preparation and filing of intrastate tariffs; the establishment and operation of intrastate revenue pools; and the auditing of intrastate exchange carriers' reporting and settlements to insure the accuracy of tariffs and of the distributions of revenues derived therefrom. *Id.* at 6853, paras. 1, 3.

[5] *Id.*, para. 3.

[6] *Id.* The Commission's rules assign the costs NECA incurs in preparing interstate access charge tariffs and in distributing interstate access charge revenues to the common line elements of the interstate access charges. *See* Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association, 2 FCC Rcd 381, 382, para. 15 (1987)(*Part 69 Notice*).

[7] NECA Manual at 1, 3.

[8] National Exchange Carrier Association Files Cost Accounting Procedures Manual, 3 FCC Rcd 473 (1988).

[9] Letter from James W. Frame, Director, Tariff and Regulatory Matters, National Exchange Carrier Association, Inc., to H. Walker Feaster III, Acting Secretary, Federal Communications Commission (Apr. 26, 1988)(April 26 Letter).

[10] *See* text accompanying note 6, *supra*.

[11] *Intrastate Services Order*, 2 FCC Rcd at 6853, para. 3.

[12] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987)(*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987)(*Reconsideration Order*), *further recon. pending.*

[13] *See Joint Cost Order*, 2 FCC Rcd at 1318-19, para. 161. The *Joint Cost Order* uses the term "cost categories" to refer to groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." This Order uses the two terms interchangeably.

[14] NECA Manual at 2, 5-14.

[15] *Id.* at 2.

[16] *Id.*; April 26 Letter, *supra* note 9, at 1.

[17] April 26 Letter, *supra* note 9, at 1.

[18] This statement may incorporate information contained in NECA's April 26 Letter.

[19] *See generally* 47 C.F.R. §63.603(a); *Part 69 Notice*, 2 FCC Rcd at 382, para. 14 (1987).

[20] *Part 69 Notice*, 2 FCC Rcd at 382, para. 14; *see also* Detariffing of Billing and Collection Services, 102 FCC 2d 1150, 1172 (1986)(*Billing and Collection Detariffing Order*), *recon.* 1 FCC Rcd 445 (1986).

[21] *See* note 4, *supra*.

[22] *See Intrastate Services Order*, 2 FCC Rcd at 6583, para. 3; *Billing and Collection Detariffing Order*, 102 FCC 2d at 1173.

[23] NECA Manual at 1.

[24] *Id.* at 1.

[25] *Id.* at 3.

[26] *See* text accompanying notes 23-24, *supra*.

[27] Compare text accompanying note 25, supra, with Part 69 Notice, 2 FCC Rcd at 384 (text of proposed amendment to Section 69.603(c) of the Commission's Rules).

[28] See Part 69 Notice, 2 FCC Rcd at 382, 384.

[29] The authorized intrastate activities are listed in footnote 4, supra.

[30] On March 25, 1988, NECA filed a request for authorization to provide customized interstate services for individual clients. Letter from Bruce W. Baldwin, President, National Exchange Carrier Association, Inc., to Gerald Brock, Chief, Common Carrier Bureau (Mar. 25, 1988). That request will be considered in a separate Order.

[31] NECA has shown that two activities that it refers to as "Vending Machine Commissions" and "Paper Recycling Commissions" are incidental to its category I activities, and we approve NECA's proposal to treat them as category I activities for accounting purposes. See Joint Cost Order, 2 FCC Rcd at 1308, paras. 77-78. However, the manual indicates that these activities could best be referred to as "Lease of Space for Vending Machines" and "Paper Recycling." S e NECA Manual at 4. NECA should clarify this matter in any new manual it may file.

[32] See Joint Cost Order, 2 FCC Rcd at 1335, paras. 290-92.

[33] See NECA Manual at 3.

[34] Cf. Joint Cost Order, 2 FCC Rcd at 1328, para. 240 (similar information to be included in manuals for separating the costs of regulated and nonregulated activities).

[35] NECA Manual at 3.

[36] April 26 Letter, supra note 9 at 1; NECA Manual at 3-4.

[37] Cf. Joint Cost Order, 2 FCC Rcd at 1321-22, paras. 182-87 (similar requirements applicable to manuals for separating the costs of regulated and activities).

[38] April 26 Letter, supra note 9, at 1-2.

[39] 47 C.F.R. Part 32.

[40] NECA Manual at 1, 3.

[41] Our approval of NECA's current classifications should not be construed as precluding NECA from changing them in any new manual it may file. Subsequent changes would be subject to any procedures we specify for amending that manual once it has been approved.

[42] April 26 Letter, supra note 9, at 1.

[43] *Id.*

[44] *See* para. 6, *supra*.

[45] *See* NECA Manual at 5-14.

[46] *See* para. 20, *supra*.

[47] NECA Manual at 2, 5, 9-11.

[48] These cost pools include all the costs recorded in the accounting classification for Board of Directors Expense as well as portions of the costs recorded in the accounting classifications for Salaries; Travel; Contract Labor; Education, Training and Service Club Membership Fees; General Expenses; Rent, Utilities and Other Occupancy Expense; Office Services; and Insurance.

[49] *See* para. 23, *supra*.

[50] NECA proposes to exempt these individuals from time reporting. *See* para. 17, *supra*.

[51] *See, e.g.*, Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 433, 442, para. 84 (similar requirement applicable to manual for separating the costs of regulated and nonregulated activities).

[52] *Intrastate Services Order*, 2 FCC Rcd at 6853,para. 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

VIDEO-LINK, INC.,
FAYETTE CABLEVISION COMPANY,
RUTH CABLEVISION COMPANY,
Complainants,

v. File No. PA-85-0011

THE BELL TELEPHONE
COMPANY OF
PENNSYLVANIA,
Defendant.

ORDER

Adopted: June 30, 1988; Released: July 13, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau.

1. On October 15, 1985, Video-Link, Inc., Fayette Cablevision Company and Ruth Cablevision Company filed the above-referenced complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224. This matter was deferred pending issuance of amended rules for processing pole attachment rate complaints, *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles,* 2 FCC Rcd 4389 (1987). The complainants currently do business as Helicon Group, Ltd. (Helicon). On May 19, 1988, Helicon submitted a letter requesting dismissal of the complaint. On the basis of the statement contained in this letter, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by Video-Link, Inc., Fayette Cablevision Company and Ruth Cablevision Company is DISMISSED and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GROUP W CABLE, INC.,
SOUTHWEST VIDEO CORPORATION,
Complainants,

v. File No. PA-86-0010

HOUSTON LIGHTING &
POWER COMPANY,
Defendant.

ORDER

Adopted: June 30, 1988; Released: July 12, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau.

1. On April 10, 1986, Group W Cable, Inc. and Southwest Video Corporation filed the above-referenced complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224. This matter was deferred pending issuance of amended rules for processing pole attachment rate complaints, *Pole Attachment Complaints Held in Abeyance*, Public Notice, Mimeo No. 0399 (Oct. 21, 1985). On May 11, 1988, All Remaining Partners (ARP), the consortium that acquired the complainants in this case, submitted a request for dismissal of the complaint. On the basis of the statement contained in ARP's request, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by Group W Cable, Inc. and Southwest Video Corporation is DISMISSED and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

STORER COMMUNICATIONS
OF JEFFERSON COUNTY,
INC.,
STORER COMMUNICATIONS
OF BOWLING GREEN-WARREN
COUNTY, INC.,
Complainants,

v. File No. PA-85-0020

SOUTH CENTRAL BELL
TELEPHONE COMPANY,
Defendant.

ORDER

Adopted: June 30, 1988; Released: July 12, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau.

1. On August 27, 1985, Storer Communications of Jefferson County, Inc. and Storer Communications of Bowling Green-Warren County, Inc. filed the above-referenced complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224. This matter was deferred pending issuance of amended rules for processing pole attachment rate complaints, *Pole Attachment Complaints Held in Abeyance*, Public Notice, Mimeo No. 0399 (Oct. 21, 1985). On April 18, 1988, the complainants submitted a letter requesting dismissal of the complaint. On the basis of the statement contained in the complainants' letter, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by Storer Communications of Jefferson County, Inc. and Storer Communications of Bowling Green-Warren County, Inc. is DISMISSED and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Astro Cablevision
Corporation d/b/a
NEWCHANNELS CABLE TV,
Complainant,

v. File No. PA-86-0008

DUQUESNE LIGHT COMPANY,
Defendant.

ORDER

Adopted: June 30, 1988; Released: July 13, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau.

1. On March 5, 1986, Astro Cablevision Corporation d/b/a NewChannels Cable TV filed the above-referenced complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224. This matter was deferred pending issuance of amended rules for processing pole attachment rate complaints, *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles,* 2 FCC Rcd 4389 (1987). On April 18, 1988, the complainant submitted a letter requesting dismissal of the complaint. On the basis of the statement contained in the complainant's letter, we conclude that there are no longer issues in controversy and the proceeding should be terminated.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by Astro Cablevision Corporation d/b/a NewChannels Cable TV is DISMISSED and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SAN DIEGO MOVIE CHANNEL,
Complainant,

v. File No. E-88-63

SAN DIEGO MDS COMPANY,
Defendant.

ORDER

Adopted: July 1, 1988; Released: July 12, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On April 8, 1988, San Diego Movie Channel filed a complaint against San Diego MDS Company alleging failure to provide service. Subsequently, on May 31, 1988, the complainant filed a motion to voluntarily dismiss the complaint. On the basis of the statements contained therein, we conclude that the proceeding should be terminated.

2. Accordingly, pursuant to authority delegated in Section 0.291 of the Rules, 47 C.F.R. § 0.291, the above-referenced complaint IS DISMISSED and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 88-281

In the Matter of

Amendment of Part 15, Subpart C, of the Commission's Rules to require advisory Labeling of Radio Communications Receivers in light of the Electronic Communications Privacy Act of 1986. RM-5836

ERRATUM

Released: July 12, 1988

On June 14, 1988, the Commission released a Notice of Proposed Rule Making (FCC 88-185) in the above captioned proceeding. Following the release of the item a error was noted in the text of the item. This error is corrected below.

In paragraph 12. III, Legal basis, should read as follows:

III. Legal basis

The proposed amendment to the Commission's Rules is issued under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-345

In re Application of

LAWRENCE KACZMARCZYK PR 4253
215 W. Center Street
Mahanoy City, Pennsylvania 17948

For Amateur Radio Station
License and Advanced Class
Operator License

DESIGNATION ORDER

Adopted: June 27, 1988; Released: June 28, 1988

1. The Private Radio Bureau (Bureau) has under consideration the application of Lawrence Kaczmarczyk filed October 9, 1986, for an amateur radio station license and an Advanced Class amateur operator license.

2. The applicant formerly held the license for amateur station W3UQW and an Advanced Class amateur operator license. On July 12, 1985, the Commission initiated revocation and suspension proceedings (PR Docket No. 85-232) against those licenses on the basis of apparent willful violations of the following Sections of the Commission's Rules on March 14 and March 22, 1985: 97.84, 47 C.F.R. § 97.84 (failure to perform station identification procedure); 97.113, 47 C.F.R. § 97.113 (broadcasting); 97.115, 47 C.F.R. § 97.115 (transmission of music); 97.123, 47 C.F.R. § 97.123 (transmission of unidentified communications); and 97.125, 47 C.F.R. § 97.125 (willful or malicious interference). An evidentiary hearing was scheduled for October 22, 1985. On October 18, 1985, the applicant surrendered his amateur station and operator licenses for cancellation. The presiding administrative law judge then terminated the proceeding as moot. In return for the surrender of the applicant's licenses the Bureau agreed that, one year from the date of the cancellation, it would accept an application from Lawrence Kaczmarczyk to be relicensed in the amateur service. The Bureau also agreed that, provided there were no violations by the applicant in the interim, it would promptly and routinely process such an application.

3. Information obtained by Field Operations Bureau observations and now before the Commission indicates that on December 12, 1985, and on January 24 and December 5, 1986, the applicant operated radio transmitting apparatus on amateur service frequencies without authorization, in apparent willful violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. § 301. The information also indicates that the applicant's operation on those dates apparently was calculated to cause harmful interference to radio communications.

4. Section 309(e) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(e), requires the Commission to designate an application for hearing if it is unable to find that granting the application would serve the public interest, convenience and necessity. In view of this applicant's history summarized above, the captioned application by Lawrence Kaczmarczyk is hereby designated for hearing pursuant to Section 309(e) of the Act. If the applicant desires to appear and present evidence at a hearing before an administrative law judge, he must file a notice of appearance within 15 days of his receipt of this order. Failure to do so will result in dismissal of his application.

5. Based upon the above information, this case will be decided upon the following issues:

(a) To determine whether the applicant, Lawrence Kaczmarczyk, operated radio transmitting apparatus without authorization on December 12, 1985, January 24, 1986, and/or December 5, 1986, in willful and/or repeated violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. § 301.

(b) To determine whether any unlicensed operation established pursuant to issue (a) was calculated to cause harmful interference to radio communications.

(c) To determine the effect of the applicant's past history described in paragraph (2) upon his qualifications to become an amateur service licensee.

(d) To determine, in light of the foregoing issues, whether the applicant is qualified to become an amateur service licensee.

(e) To determine, in light of the foregoing issues, whether the grant of the captioned application would serve the public interest, convenience and necessity.

7. Copies of this *Order* shall be sent by Certified Mail -- Return Receipt Requested -- and by First Class Mail to the applicant at his address of record as shown in the caption and to his attorney, Todd J. Pariott, Pepper & Corazzini, 200 Montgomery building, 1776 K Street, N.W., Washington, D.C. 20006. Any questions about this matter should be directed to Mr. Thomas D. Fitz-Gibbon at (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. McNamara
Chief, Special Services Division
Private Radio Bureau

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON NYNEX'S COMPARABLY EFFICIENT INTERCONNECTION PLAN FOR VOICE MESSAGING SERVICES

Released: June 30, 1988

On June 21, 1988, the New York Telephone Company and New England Telephone and Telegraph Company (NYNEX) filed a Comparably Efficient Interconnection (CEI) plan to provide voice messaging services on an unseparated basis. According to NYNEX, its voice messaging services will allow customers to receive, store and retrieve telephone messages through two applications: Call Answering and Voice Mail. NYNEX states that the voice messaging services will be offered initially in the New York metropolitan local access and transport area (LATA) and the Boston LATA, and that the service could be expanded throughout its region depending on market demand and technical feasibility.

NYNEX states that its CEI plan is similar, in all essential respects, to Pacific Bell's CEI plan for voice messaging services, which the Commission has approved (Memorandum Opinion and Order, 3 FCC Rcd 1095 (1988)). As required in the Computer III proceeding (*Phase I Order*, 104 FCC 2d 958 (1986), *modified on reconsideration*, 2 FCC Rcd 3035 (1987), *further reconsideration*, 3 FCC Rcd 1135 (1988)), the Commission must approve NYNEX's CEI plan before it can begin implementing the proposed services.

NYNEX states that it will account for the joint and common costs of the voice messaging services pursuant to its Part 32 cost allocation manual that the Commission has conditionally approved (NYNEX Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 87 (1988)). NYNEX also describes its plans for complying with the other Computer III nonstructural safeguards governing the use of customer proprietary network information, nondiscrimination reporting and nondiscriminatory provisioning, and disclosure of network information.

Interested parties should file comments on this plan by **August 3, 1988,** and reply comments by **August 19, 1988,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy of each pleading should be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. Copies of the NYNEX CEI plan can be obtained from ITS, (202) 857-3800.

For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI INTERNATIONAL, INC. File No. I-T-C-88-114

Application for authority under Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in a digital submarine cable system between and among Hong Kong, Japan and Korea.

TRT TELECOMMUNICATIONS CORPORATION File No. I-T-C-88-124

Application for authority under Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in a digital submarine cable system between and among Hong Kong, Japan and Korea.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: June 30, 1988; Released: July 15, 1988

By the Chief, International Facilities Division:

1. MCI International, Inc. (MCII) and TRT Telecommunications Corporation (TRT) filed on April 19 and April 28, 1988, respectively applications with the Commission requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in the Hong Kong-Japan-Korea cable system, (H-J-K cable system) and to utilize and acquire connecting facilities necessary to extend their services to certain overseas points. MCII's application was placed on public notice April 27, 1988, and TRT's application went on public notice May 11, 1988. No comments were received.

2. The proposed H-J-K cable system is expected to be in service sometime in May, 1990. When completed, the system will extend between landing points at the existing station at Deep Water Bay, Hong Kong; the existing cable station at Chikura, Japan; and a new cable station to be constructed at Cheju, Korea. The H-J-K cable system will be connected with the respective domestic networks in Hong Kong, Japan and Korea. Suitable connecting facilities will extend the cable to the borders of other countries, including the United States, and to the cable and earth station terminals of other international communications systems.

3. The H-J-K cable system is divided into four segments. Segment A consists of the cable station at Deep Water Bay, Hong Kong. Segment C consists of the cable station at Chikura, Japan. Segment D consists of the cable station to be constructed at Cheju, Korea. Segment B consists of two working optical fiber pairs: one between Chikura, Japan and Cheju, Korea and one between Chikura, Japan and Deep Water Bay, Hong Kong; including the associated nominal 140 Mbit/s digital input/output ports at the Segment A, Segment C and Segment D cable systems. Segment B, in turn, is comprised of three subsegments: Subsegment B1, that part of Segment B between the branching unit located between the three landing points and the associated nominal 140 Mbit/s digital input/output ports at Deep Water Bay, Hong Kong (inclusive), Subsegment B2, that part of Segment B between the branching unit, including said branching unit, and the associated nominal 140 Mbit/s digital input/output ports at Chikura, Japan (inclusive), and Subsegment B3, that part of Segment B between the branching unit and the associated nominal 140 Mbit/s digital input/output ports at Cheju, Korea (inclusive). The maximum capacity of this system is provided in four 140 Mbit/s streams, two in each optical fiber pair. Each 140 Mbit/s stream contains 1890 Minimum Assignable Units of Ownership (MAUOs).[1] For voice telephone requirements, digital circuit multiplication systems (DCMS) can be applied to derive five voice paths from each MAUO. The estimated capital cost of the H-J-K cable system is approximately 185.4 million.

4. In its application, MCII seeks authority to acquire and activate up to 36 half-MAUOs in the H-J-K cable; six half-MAUOs in the Japan-Korea fiber pair and 30 half-MAUOs in the Japan-Hong Kong fiber pair. It also requests permission to acquire by lease the connecting facilities necessary to extend its capacity to Hong Kong and Korea. MCII currently employs a mix of satellite and submarine cable capacity to service these points. MCII will bear approximately .6 percent, or 1.05 million, of the estimated total capital cost of the system.

5. TRT seeks authority to acquire and operate a one-half interest in three MAUOs in the Japan-Hong Kong fiber pair and a one-half interest in four MAUOs in the Japan-Korea pair. TRT will either acquire new connecting facilities or utilize those that have been previously authorized in order to provide service on a direct basis between the U.S. and Hong Kong and Korea. It also intends to provide service on a transiting basis to points beyond Hong Kong and Korea. TRT will bear approximately .09 percent, or 165,608, of the estimated total capital cost of the system.

DISCUSSION

6. The issues concerning the need for and timing of facilities in the Pacific Ocean Region (POR) during the 1987-1995 period have been considered exhaustively in Phase II of the comprehensive planning process. In the Phase II *Report and Order*, the Commission concluded that the public interest would be served by the introduction of a fiber optic cable in the POR as early as 1988.[2] The Commission expressed a preference for the ring configuration described in Plan II-A (Mod. 4). Under Plan II-A (Mod. 4), the cable system will extend from the U.S. mainland to Hawaii, (HAW-4/TPC-3 cable system to be introduced in 1988), continue via a branching unit to Guam and the Philippines (Guam-Philippines (GP-2) ca-

ble to be introduced in 1989) and then extend from the Philippines linking Hong Kong, Korea and Japan in 1990 or later. The Commission found that the ring design would allow the cable to be self-restoring, in whole or in part, west of the branching unit. [3] For example, this configuration provides the Department of Defense (DoD) with alternative routing arrangements for connecting Guam with other locations in the Far East.[4] With a ring configuration, the loss of any one segment will not totally disrupt communications beyond that point.

7. The Commission has already approved the acquisition and operation of capacity by AT&T in the H-J-K cable system.[5] In granting AT&T's application, the Common Carrier Bureau (Bureau) determined that authorization of AT&T's participation in the H-J-K cable is consistent with the objectives underlying the Commission's conclusions in the *Report and Order*. The Bureau found that the extension of lightwave technology within the POR will promote intermodal and intramodal competition, technological development and customer choice, and will create incentives for more efficient operations. Consequently, we conclude that grant of the applications filed by MCII and TRT is in the public interest.

8. Accordingly, IT IS ORDERED that application File No. I-T-C-88-114 IS GRANTED, and MCII is authorized to:

1) acquire and operate a one-half interest in thirty MAUOs in the Japan-Hong Kong fiber pair of the H-J-K cable system;

2) acquire and operate a one-half interest in six MAUOs in the Japan-Korea fiber pair; and

3) acquire by lease such connecting facilities as may be needed to extend its capacity in the H-J-K cable system to points in Hong Kong and Korea, and to points beyond.

9. IT IS FURTHER ORDERED, that application File No. I-T-C-88-124 IS GRANTED, and TRT is authorized to:

1) acquire and operate a one-half interest in three MAUOs in the Japan-Hong Kong optical fiber pair of the H-J-K cable system;

2) acquire and operate a one-half interest in four MAUOs in the Japan-Korea optical fiber pair of the H-J-K cable system; and

3) utilize previously authorized connecting facilities and to acquire additional connecting facilities necessary to extend its service on a direct basis to Hong Kong and Korea, and on a transiting basis to points beyond those countries.

10. IT IS FURTHER ORDERED, that the Commission retains jurisdiction to reallocate the interests of MCII and TRT in capacity authorized herein, as the public interest may require to accommodate additional carriers or otherwise, with, when required, the concurrence of the foreign administration or carriers concerned, and further, jurisdiction is retained by the Commission over all matters relating to ownership, management, maintenance and operation of cable systems as authorized herein, to assure the most efficient use not only of these cable systems but of all means of communication between the U.S. and the POR.

11. IT IS FURTHER ORDERED, that the Commission retains the jurisdiction to review the DCMS, multiplexing and interworking arrangements and attribution of costs thereof and to require such changes in the provision of these services and equipment as may be necessary.

12. IT IS FURTHER ORDERED, that MCII and TRT shall not dispose of any authorized interest or capacity in the H-J-K cable system without prior authorization by the Commission.

13. IT IS FURTHER ORDERED, that MCII and TRT shall include the H-J-K cable system in its monthly Circuit Status Reports filed pursuant to the Commission's Orders. These reports shall be filed no later than the 20th day of each month providing the information for the preceding month.

14. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division

FOOTNOTES

[1] A MAUO is defined in the H-J-K Construction and Maintenance Agreement (C&MA) as a unit of ownership designated as the minimum, practical unit of ownership, consisting of 73,684.656 bits per second. A MAUO consists of 64,000 usable bits per second and an additional 9,684.656 bits per second required for multiplexing purposes.

[2] Pacific Planning, 102 FCC 2d 353, 355 (1985).

[3] *Id.* at 366.

[4] *See* DOD comments in Pacific Telecom Cable, Inc., File No. I-S-C-L-86-002, Mimeo No. 2894 (released Apr. 22, 1987).

[5] American Telephone & Telegraph Co., File No. I-T-C-88-072, DA 88-826 (released June 7, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SATELCO INC. File no. I-T-C-88-134

Application for authority to operate as an international resale carrier

TRANSCALL AMERICA, INC. File No. I-T-C-88-135

Application for authority to operate as an international resale carrier

DIRECTLINE OF AUSTIN, INC. File No. I-T-C-88-136

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 30, 1988; Released: July 15, 1988

By the Chief, International Facilities Division:

1. The captioned uncontested applications, filed on May 11, 1988 by Satelco Inc. (Satelco), Transcall America, Inc. (Transcall) and Directline of Austin, Inc. (Directline), respectively, request authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice services between the U.S. and various overseas points. The applications were placed on public notice on May 25, 1988. No comments were received.

2. The applicants are already providing domestic resale services. They now propose to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by Satelco, Transcall and Directline.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-88-134, I-T-C-88-135 and I-T-C-88-136 ARE GRANTED, and the applicants are authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI's Tariff FCC No. 1 and U.S. Sprint's Tariffs FCC Nos. 1 and 2 between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicants and their correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BIZTEL, LTD. File No. I-T-C-88-122

Application for authority to operate as an international resale carrier

AMERICAN TELCO NETWORK SERVICES, INC. File No. I-T-C-88-126

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 30, 1988; Released: July 15, 1988

By the Chief, International Facilities Division:

1. The captioned applications, filed on April 26, and May 2, 1988, by Biztel, Ltd. (Biztel) and American Telco Network Services, Inc. (ATNSI), respectively, request authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The applications were placed on public notice on May 10, 1988. No comments were received.

2. The applicants are already providing domestic resale services. They now propose to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by Biztel and ATNSI.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-88-122 and I-T-C-88-126 ARE GRANTED; and

a. Biztel is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff FCC No. 1, MCI's Tariff FCC No. 1 and US Sprint's Tariff FCC No. 1 between the United States and those points listed in those tariffs; and

b. ATNSI is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff FCC No. 1, US Sprint's Tariffs FCC Nos. 1 and 2 and MCI's Tariff FCC No. 1 between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicants and their correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEGRAPH COMPANY, INC.

File No. I-T-C-88-118
File No. I-T-C-88-121

Application for authority to acquire and operate facilities for service between Hawaii and Spain and the Netherlands and beyond

Application for authority to acquire and operate facilities for service between Hawaii and the People's Republic of China

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 30, 1988; Released: July 15, 1988

By the Chief, International Facilities Division:

1. The captioned uncontested applications, filed on April 22, 1988 by GTE Hawaiian Telephone Company (HTC), request authority to acquire and operate facilities for direct service between Hawaii, on the one hand, and Spain, the Netherlands and the People's Republic of China (PRC), on the other hand, and beyond. Application File No. I-T-C-88-118 was amended by letter of May 9, 1988. Both applications were placed on public notice on May 4, 1988. No comments were received. Upon consideration of the applications, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Spain, the Netherlands and the People's Republic of China by HTC.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-88-118 and I-T-C-88-121 ARE GRANTED, and HTC is authorized to:

a. acquire by IRU from American Telephone and Telegraph Company and operate a one-half interest in four (4) voice-grade circuits in the TAT-6 cable;

b. acquire by lease arrangement from WU World Communications Inc. and operate a one-half interest in four (4) voice-grade circuits in the TAT-6 cable;

c. lease from US Sprint and operate eight voice-grade circuits between Honolulu and Green Hill, Rhode Island;

d. use the facilities in a., b., and c. above to provide HTC's regularly authorized international message telephone service between Hawaii, on the one hand, and Spain and the Netherlands, on the other hand, and beyond:

1) Spain - four circuits;

2) the Netherlands - four circuits;

e. lease from Comsat and operate three voice-grade satellite circuits between an appropriate earth station in Hawaii and an appropriate satellite over the Pacific Ocean, connecting with similar circuits between the satellite and an earth station in the PRC furnished by HTC's correspondent in the PRC; and

f. use the facilities in e. above to provide HTC's regularly authorized international message telephone service between Hawaii and the PRC and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carrier and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between HTC and its correspondents in Spain, the Netherlands and the PRC, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. No substantial changes inconsistent with this or any other relevant Commission order shall be made before final execution of IRU agreements between HTC and AT&T and WU World Communications Inc., and copies of the agreements shall be filed with the Commission within 30 days of their execution.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB COMMUNICATIONS GROUP, INC. File No. CSG-87-034-P/L

Application for authority to construct and operate an international earth station at Staten Island, New York, for provision of INTELSAT Business Services

ORDER AND AUTHORIZATION

Adopted: June 30, 1988; Released: July 15, 1988

By the Chief, International Facilities Division:

1. The Commission is considering an application, filed on March 27, 1987, and amended July 31, 1987, and October 21, 1987, by IDB Communications Group, Inc. (IDB), requesting authority, pursuant to Title III of the Communications Act of 1934, as amended, and Section 201(c)(4), (c)(6) and (c)(7) of the Communications Satellite Act of 1962, as amended, to construct and operate international earth station facilities at Staten Island, New York, for provision of INTELSAT Business Services (IBS). The application was placed on public notice on April 8, 1987. No comments were received. The applicant has been granted authority to establish and operate channels of communication between the U.S. and various overseas points for provision of IBS service.[1]

2. The proposed earth station will consist of a 9.2 meter antenna which conforms with INTELSAT Standard E-3 technical parameters and communicates with INTELSAT Atlantic Ocean Region (AOR) satellites in the 11/14 GHz band. The earth station will be constructed at Staten Island, New York, and will be used to provide a full range of IBS services.

3. In its Report and Order in the *Earth Station Ownership Proceeding* in CC Docket No. 82-540, the Commission modified its policy on the ownership and operation of U.S. international earth stations that access the INTELSAT system by permitting carriers, individually or jointly, to own and operate their own earth station facilities.[2] In that Order, the Commission distinguished between IBS and/or television earth stations and multipurpose stations. It determined that earth stations dedicated to providing IBS and/or television services do not raise the same concerns about impact on the INTELSAT system that are raised by multipurpose stations. It also determined that the public interest requires that IBS be introduced in the United States as soon as possible. The Commission therefore concluded that it would consider only minimal legal, financial, and technical qualifications of the applicant as required by Section 308 and 319 of the Communications Act, when processing IBS and television service applications. The Commission further concluded that absent special problems, it would treat these applications as routine and expeditiously process them. [3] The Commission has granted many applications to construct and operate IBS earth stations based on this approach.[4]

4. IDB's legal, technical, and financial qualifications to construct and operate the proposed earth station are established. IDB has been authorized to construct and operate other IBS earth stations.[5] The proposed earth station conforms with INTELSAT Standard E-3 technical parameters for IBS stations. IDB has completed the necessary frequency coordination.

5. The scope of operation of the proposed station will be the same as that permitted by the Commission in previous IBS authorizations. We will limit the authorization to the provision of IBS and those video services compatible with the stations' digital format operation. To the extent that the applicant may seek to provide certain newly proposed INTELSAT services which fall within the IBS/television category, we will not restrict operation of the proposed station. However, it may not provide any service which falls outside the IBS/television category. Any authorization to use the proposed station as a multipurpose earth station would require a determination as to traffic and revenue diversion from existing multipurpose earth stations that may result.

6. Upon consideration of the application, we find that authorization of requested services and facilities is required by the public convenience and necessity.

7. Accordingly, IT IS ORDERED, pursuant to Sections 304, 309 and 319 of the Communications Act of 1934, as amended, and Section 201(c) of the Communications Satellite Act of 1962, as amended, that application File No. CSG-87-034-P/L is GRANTED, and IDB is authorized to construct and operate the proposed earth station facilities at Staten Island, New York, to provide IBS and related digital video services.[6] Before completion of equipment installation and facility activation, however, the applicant shall provide the Commission with a summary of equipment which was actually installed.

8. This order is issued under Section 0.291 of the Commission's Rules and Regulations and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* IDB Communications Group, Inc., DA 86-412, released December 31, 1986, (File No. I-T-C-87-013).

[2] Earth Station Ownership, 100 FCC 2d 250 (1984).

[3] Upon grant of an IBS/television application, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456-P). While the Commission will limit the

use of the authorized facilities to the provision of IBS or television services, carriers may seek additional authorization if they desire to use these facilities as multipurpose earth stations.

[4] *See* cases cited in Satellite Gateway Communications, Inc., Mimeo No. 2696 (released March 4, 1986) and American Telephone and Telegraph Co., Mimeo No. 3327 (released March 25, 1986).

[5] *See* IDB Communications Group, Inc., Mimeo No. 2523, released March 27, 1987, (File No. CSG-87-025-P/L).

[6] This authorization is not to be construed as permitting the provision of IBS between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-352

In Re Application of:

ONE HUNDRED AND ONE BROADCASTING, INC. File No. BPH-851216QA

For Waiver of Hearing Fee

ORDER

Adopted: June 21, 1988; Released: July 15, 1988

By the Commission:

1. The Commission has before it for consideration an Application for Review filed by One Hundred and One Broadcasting, Inc. (101) on December 17, 1987, seeking review of a November 10, 1987 decision by the Managing Director. That ruling denied waiver of the hearing fee for 101's application (File No. 851216QA) for a new FM station on Channel 266A in Richmond, Virginia.

2. Under the Commission's rules, 101's Application for Review should have been filed no later than December 11, 1987. *See* 47 C.F.R. §§ 1.115(d) and 1.4(b)(4). 101 provides neither an explanation for the late filing nor a justification for the Commission's consideration of its pleading in these circumstances.[1] These procedural rules are intended to facilitate the smooth, orderly flow of the Commission's business. Particularly in comparative hearing cases, where delay postpones the initiation of new service, the consideration of pleadings filed out of time should be limited to those circumstances where good cause is shown. Accordingly, 101's pleading will be dismissed. Nevertheless, in order to provide guidance for other applicants that may be similarly situated, we shall briefly address 101's arguments.

3. 101 alleges that, when it filed its application in 1985, it could not have predicted or planned for the imposition of a 6,000 hearing charge. However, the mere filing of an application does not entitle any party to expect that the applicable law or rules will remain constant throughout the application process. Nor is an applicant entitled to a fee waiver merely because it is owned by members of qualifying minority groups. 101 also claims that it should be entitled to a waiver because it is 100% minority-owned. Although we wish to encourage minority-owned applicants, we have previously considered and rejected proposals for blanket fee waivers for minority applicants. 2 FCC Rcd 947, 960-61 (1987).

4. We have also considered 101's procedural objections. In this case, the presiding Administrative Law Judge (ALJ) dismissed 101's application on October 15, 1987, before the Managing Director acted on the waiver request. However, the ALJ's decision had no bearing on the Managing Director's November 10, 1987 decision to deny the waiver request. Moreover, by requesting a waiver without submitting the required fee, 101 assumed the risk that waiver might be denied and its application dismissed. 47 C.F.R. § 1.1115(c)(1) and (2). Finally, we note that the ALJ's failure to expressly condition dismissal on the outcome of the fee waiver request would not have prevented reinstatement of 101's application if waiver had been granted. Therefore, the Judge's dismissal of 101's application resulted in no unfairness to the applicant.

5. 101 asks, in the alternative, for deferral of the application fee. Section 8(d)(2) of the Communications Act provides: "The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest." 101, however, has offered no "good cause" to warrant deferral in this case, other than a generalized argument that minority ownership would be promoted and an assertion that payment of the fee would impose a hardship on 101. As the Commission has previously said:

> [T]hose requesting a waiver or deferral will have the burden of demonstrating that, for each request, a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for that specific regulatory action of the FCC . . . .[W]e believe that, in most instances, the general public interest in reimbursing the government for services provided would far outweigh the private interest in waiving or deferring the small, incremental cost represented by these fees.

2 FCC Rec at 961.

6. 101 asserts that it cannot afford to pay the application fee at this time; however, as the Managing Director concluded, 101 did not show that it would be better able to pay the fee (plus a 20% penalty) at the end of the six-month deferral period.[2] 101's initial request and Application for Review offered no explanation of why the applicant would have been able to pay7500 on March 27, 1988 when it was unable to pay6000 on September 27, 1987.

6. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed by One Hundred and One Broadcasting, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Secretary

FOOTNOTES

[1] Although 101 alludes to the relocation of its communications attorney, and the decision to proceed without counsel, it does so in conjunction with the filing of its Notice of Appearance and request for fee waiver, not the Application for Review.

[2] Section 1.1115(d) provides that deferrals may not exceed six months, and Section 1.1114(c) provides an additional charge, equal to 25% of the fee, for deferred payments. Thus, had the

maximum deferral been granted, 101's fee of6,000, plus a1,500 deferred payment charge, would be due on or about March 28, 1988.

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